

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

ROBERT NEWKIRK,	:	CIVIL ACTION NO. 1:16-CV-332
	:	
Plaintiff,	:	Hon. Robert J. Jonker
	:	
v.	:	
	:	
CONSOLIDATED RAIL CORPORATION	:	JURY TRIAL DEMANDED
and NORFOLK SOUTHERN RAILWAY	:	ORAL ARGUMENT REQUESTED
COMPANY,	:	
	:	
Defendants.	:	

**APPENDIX SUPPORTING DEFENDANTS MOTION FOR PARTIAL SUMMARY
JUDGEMENT AS TO PLAINTIFF'S LOCOMOTIVE INSPECTION ACT CLAIMS
AND MOTION TO EXCLUDE PLAINTIFF'S EXPERT, GEORGE GAVALLA**

Defendants submit true and correct copies of the following materials in support of their Motion for Summary Judgment on Plaintiff's Locomotive Inspection Act Claims and the Motion to Exclude Plaintiff's Expert, George Gavalla.

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	February 8, 2017 Deposition of Robert Newkirk
B	December 11, 2016 Expert Report of George Gavalla
C	March 31, 2017 Deposition of George Gavalla
D	Affidavit of Edward W. Pritchard
E	Federal Register, Volume 77, dated April 9, 2012
F	April 4, 1996 correspondence from E. English to W. Honeycutt
G	March 1, 1996 correspondence from W. Honeycutt to E. English
H	Locomotive Crashworthiness and Cab Working Conditions Report to Congress
I	FRA's Motive Power and Equipment Compliance Manual

- J 69 Fed. Reg. 63890
- K 45 Fed. Reg. 21098
- L January 19, 1990 correspondence from G. McBride to R. Knudsen
- M February 11, 2016 Order in *Harris v. Norfolk Southern Railway Company*

Respectfully submitted,

BURNS WHITE LLC

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and NORFOLK SOUTHERN RAILWAY	:	
COMPANY,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this _____ day of _____, 2017, upon consideration of Defendants Consolidated Rail Corporation and Norfolk Southern Railway Company's Motion for Summary Judgment, and any response thereto, it is hereby **ORDERED** and **DECREED** that said Motion is **GRANTED**. Plaintiff's claims under the Locomotive Inspection Act, 49 U.S.C. §20701, *et seq.* (Counts II and IV) are hereby dismissed with **PREJUDICE** as to Defendants Consolidated Rail Corporation and Norfolk Southern Railway Company.

BY THE COURT:

Transcript of Robert Newkirk
Conducted on February 8, 2017

1 (1 to 4)

1	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION	1	Iron River, Michigan
2	ROBERT NEWKIRK, Plaintiff, vs. CONSOLIDATED RAIL, CORPORATION, et al., Defendants.	2	Wednesday, February 8, 2017 - 10:02 a.m. CST
3		3	ROBERT NEWKIRK
4	Case No. 1:16-CV-332	4	having been first duly sworn, was examined and
5		5	testified on his oath as follows:
6		6	EXAMINATION
7		7	BY MR. HORVAT:
8		8	Q Mr. Newkirk, have you ever had your deposition taken
9		9	before?
10		10 A	Yes.
11		11 Q	Okay. How many times have you had it before?
12		12 A	I am not really sure, about three --
13		13 Q	Okay.
14		14 A	-- I would say.
15	APPEARANCES: For the Plaintiff: Mr. Vincent R. Petrucelli (P30055) Petrucelli & Waara, P.C. 328 West Genesee Street P.O. Box AA Iron River, MI 49935 (986)265-6173	15 Q	So you kind of know how this is going to go; right?
16	For the Defendant: Mr. Patrick M. Horvat Burns, White, L.L.C. Four Northshore Center 106 Isabella Street Pittsburgh, PA 15212 (412)995-3026	16 A	Yeah.
17		17 Q	Since she is taking everything down, we may have a
18		18	tendency to talk over one another, or you may know my
19		19	question before I ask it. Unfortunately, she can only
20		20	take one of us down at a time, so try to let me finish
21		21	my question, and I will certainly forward you that
22	Reported by: Sandra A. Larson, CSR-2916, RMR	22	courtesy.
1	TABLE OF CONTENTS	2	1 A That will be a job.
2	ROBERT NEWKIRK	2 Q	If you don't know an answer to a question, "I don't
3	Examination by Mr. Horvat 3	3 know" is a perfectly good answer. I am obviously going	
4	Examination by Mr. Petrucelli 141	4 to be asking you questions that cause you to reach back	
5	Examination by Mr. Horvat 164	5 in your memory. I don't want you guessing, but if you	
6	Examination by Mr. Petrucelli 171	6 estimate, just let me know, and that's fine. All	
7	EXHIBITS	7	right?
8	Exhibit A - list of medications 106	8 A (Witness nodded head.)	
9	Exhibit B - Reynolds Clinic progress notes 118	9 Q If you need to use the restroom, water, whatever you	
10	Exhibit C - Dr. Weeks office visit form dated 18-18-11 120	10 need, just speak up. You're not bolted to your chair	
11	Exhibit D - Bayside Allergy report dated 4-14-13 125	11 or anything like that, so just let me know, and we will	
12	Exhibit E - letter from Dr. Knitter dated 11-26-13 169	12 be happy to accommodate you.	
13		13 A Thank you.	
14		14 Q You said -- Can you state your name for the record?	
15		15 A Robert Rex Newkirk.	
16		16 Q And just the last four digits of your Social Security	
17		17 Number?	
18		18 A 3649.	
19		19 Q Okay. And your current address?	
20		20 A 6369 Morgan Road; Osseo, Michigan. 49266, I believe,	
21		21 but I'm going to make sure here.	
22		22 Q All right. That's fine.	

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3 (9 to 12)

	9		11
1 A I think.		1 Q B-A-R?	
2 Q That's all right. You didn't have your deposition		2 A W-I-L-L-E-R.	
3 taken for that?		3 Q Has he lived there for an extended period of time, or	
4 A No.		4 you guys just moved in there?	
5 Q Okay. And what was the result of that suit or claim?		5 A Yes.	
6 A 25,000.		6 Q Okay. Do you own that home or --	
7 Q Okay. And you retired from the railroad in 2005?		7 A No.	
8 A Yeah.		8 Q -- do you just stay there?	
9 Q Okay. Regular retirement?		9 A Yeah. I rent a room from him when I am there.	
10 A No, disability.		10 Q Okay. You rent a room from him?	
11 Q Disability. And that was as a result of that		11 A Yeah.	
12 explosion?		12 Q Okay. Mr. Barwiller, did he ever work for the	
13 A Yes.		13 railroad?	
14 Q And the 2005 disability reason why you left the		14 A Yes. He is an on disability engineer also.	
15 railroad, it has nothing to do with your COPD or		15 Q Do you know what he is on disability for?	
16 anything like that; is that correct?		16 A His heart, I believe.	
17 A No, sir.		17 Q Did you ever work with Mr. Barwiller?	
18 Q That is correct?		18 A No.	
19 A Correct. Nothing, yeah.		19 Q How did you come to meet Mr. Barwiller or learn of him?	
20 Q Nothing to do with this current lawsuit?		20 A When I started working out of Bryan, Ohio.	
21 A Yeah.		21 Q For the railroad?	
22 Q How long have you lived at -- on Morgan Street or		22 A Yes. He is a Toledo NS man.	
	10		12
1 Morgan Avenue there?		1 Q Do you know when he left the railroad, by chance,	
2 A Since December 31st of 2016.		2 Mr. Barwiller?	
3 Q All right. Do you recall any of your railroad I.D.		3 A No, I do not.	
4 numbers?		4 Q Do you have any idea when he started with the railroad?	
5 A My employee number was 261494.		5 A In the '60s. He is an NYC man.	
6 Q Was that for Conrail and NS?		6 Q Okay. Do you know what railroad he was working for	
7 A Yeah. That's my hiring out number.		7 when he left?	
8 Q Okay. And I don't believe I asked you, and I		8 A NS.	
9 apologize, your date of birth?		9 Q Okay. Do you own any property or any homes anywhere	
10 A June 6, 1956.		10 else?	
11 Q And you're currently 60 years old?		11 A Nope.	
12 A Yes, sir.		12 Q Okay. So you don't own any homes?	
13 Q Okay. What kind of home do you live in on Morgan?		13 A No.	
14 A It is on Bird Lake.		14 Q Or property?	
15 Q Is it a home, trailer?		15 A No.	
16 A It is a house.		16 Q Okay.	
17 Q Okay. Do you live there by yourself?		17 MR. PETRUCELLI: You mean real property?	
18 A No.		18 Q (By Mr. Horvat) Yes, real property, excuse me, real	
19 Q Okay. Who else lives there with you?		19 property, like land or --	
20 A John Barwiller.		20 A (By the Witness) No.	
21 Q Could you spell Mr. Barwiller's name?		21 Q Okay. What was the last home you owned?	
22 A Just like it sounds.		22 A 2265 North Manistee River Road; Grayling, Michigan,	

Transcript of Robert Newkirk
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2 (5 to 8)

5	7
1 A Because I could be wrong. 49266.	1 A Yes.
2 Q All right. You have mentioned you had your deposition	2 Q Okay. And what did you -- What was the reason for your
3 taken three -- you know, approximately three times	3 deposition?
4 before. What were they for?	4 A I got hurt at the hotel in Chicago.
5 A Injuries.	5 Q Was this the explosion?
6 Q Okay. When was the first deposition you had?	6 A Yeah.
7 A I am not sure of the date, I believe around '96.	7 Q Okay. Tell me a little bit about that, that situation,
8 Q Okay. That's, like I said, I assume you are estimating	8 that incident at the hotel in Chicago.
9 about that time?	9 A Walking out of the hotel with two other people, and
10 A That's estimating.	10 Jimmy Vangel seen the trash can smoking, so he went to
11 Q Okay. And I assume you had an attorney for that one?	11 the front desk to tell them. And I can't even remember
12 A Yes.	12 who the other person was, but me and him kept walking,
13 Q Okay. Who was your attorney?	13 and we were underneath the canopy, outside of the
14 A Coffey and Kaye.	14 doors, when it blew -- when it blew up.
15 Q Is that C-A-Y-E, Coffey and Kaye?	15 Q Okay.
16 A Yeah.	16 A And Jimmy was coming out the doors. And when he hit
17 Q Coffee, like the drink?	17 the doors, I turned around real fast to look, because
18 A Yeah.	18 that's when the explosion happened, and that's how that
19 Q Okay.	19 happened.
20 A Well, they are out of Philly.	20 MR. HORVAT: Okay. Off the record.
21 Q Okay. And what was that injury for?	21 (Discussion off the record.)
22 A My neck.	22 Q (By Mr. Horvat) And you said Mr. Vangel, V-A-N-G-E-L?
6	8
1 Q And that was an injury on the railroad?	1 A (By the Witness) Yeah.
2 A Yes.	2 Q Okay. He was a coworker of yours?
3 Q And what was the result of that suit?	3 A Yes, an engineer in the same pool.
4 A Settled out of court.	4 Q Okay. Do you know where Mr. Vangel lives?
5 Q Okay. Do you recall approximately how much that was	5 A Not offhand, no. It has been quite awhile since I have
6 for?	6 mingled with them people, since 2005, so --
7 A One hundred thousand.	7 Q Okay. And what was the result of that?
8 Q Do you know who the counsel for the railroad was, by	8 A Settled out of court.
9 chance?	9 Q Okay. Approximately for how much?
10 A No, I do not.	10 A 500,000.
11 Q Okay. The second time you had your deposition taken,	11 Q And the last time you had your deposition taken?
12 when was that?	12 A That was the last time.
13 A E.J. Leizerman.	13 Q Okay. Okay. So it was just these two times that you
14 Q Out of Toledo?	14 remember?
15 A Yes.	15 A To the best of my ability, I am pretty sure that's --
16 Q Do you remember approximately when that was? You can	16 this is the third.
17 estimate, like the decade or something like that, as	17 Q Okay. Did you also have a hearing loss suit, as well?
18 well.	18 A Yes, I did.
19 A I think it was probably around 2007 --	19 Q And do you recall who your attorney was for that?
20 Q Okay.	20 A I can't think of his name, but the firm I think was
21 A -- estimating.	21 Provier, Lichtenstein out of Detroit.
22 Q Okay. Was it after you left the railroad?	22 Q Okay.

Transcript of Robert Newkirk
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4 (13 to 16)

	13		15
1	49738.	1	him.
2	Q And how long did you live at that one?	2	Q The --
3	A Since 2011.	3	MR. PETRUCELLI: He doesn't seem brain
4	Q When did you sell that home?	4	damaged to me.
5	A December 30th, 2016.	5	THE WITNESS: No, he's not.
6	Q Okay. And you owned that home?	6	Q (By Mr. Horvat) The Manistee home, what kind of heat
7	A Yeah.	7	was in that home if you recall?
8	Q Did you build or help build that home?	8	A (By the Witness) It had a boiler, and it had forced
9	A No.	9	air, and it had a fireplace.
10	Q Whenever you lived there, for that approximately five	10	Q Okay. Wood burning fireplace?
11	years, did you do any home improvements or any	11	A Yes.
12	remodeling?	12	Q Did you ever do any work on the boiler?
13	A Yes.	13	A No.
14	Q Okay. What kind of improvements or remodeling did you	14	Q What kind of roof was on that home?
15	do?	15	A Metal.
16	A The fireplace, I had to have the fireplace tore down	16	Q Okay. An insulated home?
17	and redid.	17	A Yes.
18	Q Did you do any of that work yourself?	18	Q Okay. Do you know what kind of insulation was in
19	A No.	19	there?
20	Q Okay. Any other home improvement projects on that home	20	A Not right offhand.
21	that you can recall?	21	Q That's fine. The next house you lived in --
22	A No, just basic stuff.	22	A At Bird Lake?
	14		16
1	Q Did you have issues with the carpet there?	1	Q Did you live at -- Wait one second here -- Averill
2	A Yeah. Yes.	2	Avenue Southwest, Wyoming, Michigan?
3	Q Did you take it out, rip out the carpet?	3	A Oh, that was my mother and father's house.
4	A Yeah.	4	Q Is that the house you grew up in?
5	Q Okay.	5	A Yeah.
6	A Yeah.	6	Q When did you move out?
7	Q Did you put new carpet in?	7	A When they put my mom in a home, when my sister put my
8	A No. I put granite in front of the fireplace.	8	mother in a home.
9	Q Okay.	9	Q And you lived there from approximately 2009 to 2011?
10	A I had granite installed.	10	A Yes.
11	Q Was there something wrong with the carpet?	11	Q Is that the house you grew up in?
12	A I was told that it had dust mites there.	12	A Yes.
13	(Discussion off the record.)	13	Q Okay. So you lived there in two stints I guess,
14	Q (By Mr. Horvat) What does LP stand for?	14	whenever you grew up and then moved out, and when you
15	A (By the Witness) Low Pressure.	15	moved back from 2009 to 2011?
16	Q Okay.	16	A Yeah. Yes. Excuse me.
17	A First dog I have ever delivered. And he was in a sac	17	Q That's okay. The first time, whenever you were growing
18	and I was taking my time, really gingerly. And the	18	up, what age did you move out of that home, if you
19	lady next door come over, and looked at it, and ripped	19	recall?
20	the thing off. She had to suck the stuff to get him to	20	A I think about 19.
21	breathe, so I figured he might be a little damaged. So	21	Q Okay.
22	I named him Low Pressure, and I decided I had to keep	22	A That's a guess.

Transcript of Robert Newkirk
Conducted on February 8, 2017

5 (17 to 20)

	17		19
1 Q I mean you can estimate. I mean that's fine. I mean		1 Q Okay.	
2 that's an educated guess, I guess you could say. Was		2 A Estimate.	
3 the house built whenever you were there? Was it		3 Q Is that a home?	
4 already built I guess?		4 A No, it was an apartment.	
5 A It was already there.		5 Q Okay.	
6 Q Did you ever do any home remodeling on that home,		6 A With John Barwiller.	
7 during that first stint?		7 Q Okay.	
8 A No, I did not.		8 A And that had --	
9 Q How was that home heated?		9 Q How was it heated?	
10 A Forced air.		10 A Baseboard.	
11 Q I assume it was still forced air whenever you moved		11 Q I assume you didn't do any work on that home or	
12 back in, in 2009; correct?		12 anything, being an apartment?	
13 A Yes, correct.		13 A No, no.	
14 Q Did you do any work on it the second time you lived		14 Q Excuse me. Okay. And I am estimating here, would that	
15 there?		15 have been about 2000 or 2001, somewhere in that	
16 A No.		16 neighborhood?	
17 Q Okay. The next home you lived in would have been on		17 A Yeah.	
18 Hill Avenue in Toledo?		18 Q Okay. I am just going in chronological order there.	
19 A Yes.		19 A I understand.	
20 Q That's 3601 Hill Avenue, No. 8?		20 Q Then you lived in Osseo, Michigan?	
21 A Yes.		21 A Yeah.	
22 Q Is that --		22 Q Is that -- Did I pronounce that correctly?	
	18		20
1 A 88.		1 A Yeah. That's the place where I am at when I am here --	
2 Q 88, excuse me. Okay.		2 I mean there --	
3 A And that was a trailer.		3 Q Okay.	
4 Q Okay. You lived there for about eight years?		4 A -- now.	
5 A Yeah.		5 MR. PETRUCELLI: I thought it was Osseo.	
6 Q Sound about right?		6 THE WITNESS: Osseo, yeah.	
7 A Sounds about right.		7 MR. PETRUCELLI: But --	
8 Q All right. From 2001 to 2009?		8 THE WITNESS: O-S-S-E-O. Yeah.	
9 A Yeah.		9 Q (By Mr. Horvat) That's Mr. Barwiller's home?	
10 Q Did you ever do any kind of work on that trailer, any		10 A (By the Witness) Barwiller, yeah.	
11 remodeling or anything like that?		11 Q Does Mr. Barwiller smoke?	
12 A I didn't. I paid a neighbor to.		12 A No.	
13 Q Okay. What kind of work did he do or he/she do?		13 Q Has he ever smoked?	
14 A Just put in -- took up the carpet and put in wood		14 A Yeah, he used to smoke.	
15 floors.		15 Q Do you know when he quit at all?	
16 Q Okay. How was that trailer heated?		16 A It's been quite a long time ago.	
17 A Forced air, I believe.		17 Q And you lived in Elkhart, Indiana, on Wildwood Avenue?	
18 Q Okay. You lived on Secor Road in Toledo for a little		18 A Yes.	
19 bit?		19 Q How long did you live there, in Elkhart?	
20 A Yes.		20 A Not quite a year.	
21 Q Do you know how long you lived there?		21 Q Okay. Apartment, trailer?	
22 A Not quite a year.		22 A Trailer.	

Transcript of Robert Newkirk
Conducted on February 8, 2017

6 (21 to 24)

		21		23
1 Q	Okay. Did you ever do any kind of work on that		1 Q	Did you live with anybody in Elkhart?
2 trailer?			2 A	A lady named Peggy.
3 A	No, sir.		3 Q	Okay.
4 Q	Okay. And you lived in Allentown?		4 A	I rented a room from her.
5 A	Yeah.		5 Q	Oh, okay.
6 Q	Allentown, Pennsylvania?		6 A	And I don't know her last name.
7 A	Yeah.		7 Q	That's fine. Within -- Was that the first home you
8 Q	Do you know when you lived in Allentown?		8	lived in after moving out of your family home, that
9 A	Not really. It was when the auto industry went down.		9	Allentown, PA, home?
10 I	I think it was in the '80s, to the best of my ability.		10 A	No.
11 It	was --		11 Q	Okay. Do you recall any of the other --
12 Q	Yeah.		12 A	I don't remember the addresses, but the cities was
13 A	Yeah.		13	Kentwood.
14 Q	That's fine. Was it a home, trailer?		14 Q	Kentwood?
15 A	An apartment.		15 A	Yes.
16 Q	Okay. What brought you to Allentown, Pennsylvania?		16 Q	Is that in Michigan?
17 A	Work.		17 A	Yes.
18 Q	You worked for the railroad?		18 Q	Okay.
19 A	Yeah.		19 A	It is right next to Wyoming.
20 Q	You worked for Conrail at the time?		20 Q	Okay. How long did you live in Kentwood, if you
21 A	Yes.		21	recall?
22 Q	Anybody live in that apartment with you?		22 A	A year, year-and-a-half.
		22		24
1 A	Dick Migwan (phonetic spelling).		1 Q	Okay. Did you own that home?
2 Q	I am going to have to ask you to spell that one.		2 A	No. It was an apartment.
3 A	You got me.		3 Q	Okay. And did you live by yourself, or did you have a
4 Q	Could you say it one more time?		4	roommate?
5 A	Migwan.		5 A	No. I was married.
6 Q	Did Dick work for the railroad?		6 Q	Okay. Did you also live in Grand Rapids?
7 A	Yes.		7 A	Yes.
8 Q	Okay.		8 Q	On Woodfield East Drive?
9 A	He is a Central New Jersey guy.		9 A	That would be Kentwood.
10 Q	You never worked for the CNJ, did you?		10 Q	Okay. Okay. And your family home growing up, you
11 A	No.		11	lived there until about you were 19, roughly?
12 Q	That's what I thought, okay. I assume he was working		12 A	Right.
13 for	Conrail, as well?		13 Q	Who lived there when you were growing up?
14 A	Yes.		14 A	My mother, my father, and I had two sisters, Vicki and
15 Q	What did he do for the railroad, Dick?		15	Linda. And they moved out when they were 18, they got
16 A	Engineer.		16	married and left.
17 Q	Same pool as you?		17 Q	Okay.
18 A	No.		18 A	And they are both older than me.
19 Q	Okay. Did you ever work with Dick?		19 Q	Okay. When were you married?
20 A	No.		20 A	'78, '79.
21 Q	Okay. How long did you live in Allentown?		21 Q	And how long were you married for?
22 A	Not quite a year.		22 A	Not long.

Transcript of Robert Newkirk
Conducted on February 8, 2017

7 (25 to 28)

	25		27
1 Q Okay.		1 weather.	
2 A About two years, till about '80. When I come back from		2 MR. HORVAT: I went to law school in Florida,	
3 Allentown, it was done.		3 so it doesn't bother me.	
4 Q So about '80, '81?		4 MR. PETRUCELLI: Oh.	
5 A Yeah.		5 MR. HORVAT: I don't mind the heat.	
6 Q And your ex-wife's name?		6 Q (By Mr. Horvat) How old is Mandy?	
7 A Jeri.		7 A (By the Witness) Thirty-eight.	
8 Q G-E-R-I?		8 Q Does she work?	
9 A G-J-E-R-I.		9 A Yeah.	
10 Q And what's Jeri's maiden name?		10 Q What does she do?	
11 A Eastman. And she passed about a year-and-a-half ago.		11 A She is like a fitness instructor.	
12 Q Do you know what she passed away from?		12 Q And what's her husband's name?	
13 A She had a real rare skin disease, and it hardened her		13 A Louis.	
14 balls -- her insides, and they burst, and that's how		14 Q And what's Louis do?	
15 she died.		15 A He works selling medical equipment.	
16 Q Do you know how old she was when she passed?		16 Q Okay. Is Mandy a smoker?	
17 A Probably 55.		17 A No.	
18 Q Okay. Only marriage?		18 Q That seems like --	
19 A Only marriage.		19 MR. PETRUCELLI: It would be kind of	
20 Q Okay. Did Jeri smoke?		20 counterintuitive to a fitness instructor.	
21 A No.		21 MR. HORVAT: That's what I was just about to	
22 Q Did Jeri work?		22 say.	
	26		28
1 A Yes.		1 Q (By Mr. Horvat) Is Louis a smoker?	
2 Q What did she do?		2 A (By the Witness) No.	
3 A She worked at Steelcase.		3 MR. PETRUCELLI: You should ask is LP a	
4 Q Steelcase?		4 smoker. No, sorry.	
5 A Steelcase.		5 Q (By Mr. Horvat) Do you have any grandkids?	
6 Q What's that?		6 A (By the Witness) Layla.	
7 A It is a furniture manufacturer in Grand Rapids.		7 Q Okay. How old is Layla?	
8 Q Okay.		8 A She just turned two.	
9 A Office furniture.		9 Q Does Layla have any health issues or anything like	
10 Q Okay. Did you guys have kids together?		10 that?	
11 A Yes, a daughter.		11 A No, not that I know of.	
12 Q Okay. Her name?		12 Q Okay. Any breathing problems or anything like that,	
13 A Mandy.		13 that you know of?	
14 Q Is Mandy married?		14 A No.	
15 A Yes.		15 Q How about Mandy, does she have any breathing problems?	
16 Q What's her married name?		16 A No.	
17 A S-O-T-A, Sota.		17 Q Any forms of cancer has she ever been diagnosed with?	
18 Q And where does Mandy live?		18 A She had breast cancer. She had both of her breasts	
19 A Bradenton, Florida.		19 removed, reconstructive surgery, and she has been in	
20 Q Smart girl. It's beautiful down there, the weather is		20 remission or cancer free now for a few years.	
21 beautiful.		21 Q That's great. Mandy your only child?	
22 MR. PETRUCELLI: If you like hot, muggy		22 A I have a son --	

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8 (29 to 32)

	29		31
1 Q Okay.		1 A Russell R.	
2 A -- named Kyle. I wasn't married to his mother.		2 Q Two Ss, two Ls?	
3 Q Okay. Is Kyle's last name Newkirk?		3 A I believe so.	
4 A No.		4 Q All right. Is your father deceased?	
5 Q What's his last name?		5 A Yes.	
6 A Koetje.		6 Q Okay. How old was he when he passed?	
7 Q Could you spell that?		7 A I believe 78.	
8 A K-O-E-T-J-E.		8 Q Okay. Do you know what he passed away from?	
9 Q Where does Kyle live?		9 A Not really.	
10 A I haven't -- I don't have a clue.		10 Q Okay. Heart disease?	
11 Q Okay. Do you know approximately how old Kyle is?		11 A Could be.	
12 A Twenty-six.		12 Q Okay. I am not putting words -- If you don't know --	
13 Q Okay. His mother, what's her name?		13 A Well, it could very well be. I really don't know the	
14 A Maria.		14 technical term. I called him dad, and when he is gone,	
15 Q Same last name?		15 he is gone. That's --	
16 A Yeah.		16 Q Was your father a smoker?	
17 Q Okay. Do you have any idea where Maria lives?		17 A He did, yes. But he quit for probably 20, 25 years	
18 A No.		18 before he passed.	
19 Q Do you have any idea if she is still alive, Maria?		19 Q Okay. Do you know what type of cigarettes he smoked?	
20 A No, I do not.		20 A No.	
21 Q Okay. Do you have any idea what Kyle does for a		21 Q Okay. Did he smoke in the family home growing up?	
22 living?		22 A No, not really. If he did, well, I was outside.	
	30		32
1 A No, I do not.		1 Q Okay. What did your dad do for a living?	
2 Q Kyle and your daughter your only two children?		2 A Railroad.	
3 A Yes.		3 Q Okay. What was his job title?	
4 Q Is your daughter in any way financially dependent upon		4 A Car inspector.	
5 you?		5 Q Where did he work at?	
6 A No. They do pretty good.		6 A Grand Rapids.	
7 Q Okay.		7 Q Did he work at Grand Rapids the entire time?	
8 A But they are kids, and they can always use help.		8 A He went all over for them.	
9 Q Well, sure. Kyle, was he diagnosed with asthma, that		9 Q Okay. Do you know when he retired from the railroad,	
10 you know of?		10 your dad?	
11 A I am not sure.		11 A No, I don't.	
12 Q Okay.		12 Q Do you know what railroad he was working for when he	
13 A It has been so long since I have --		13 retired?	
14 Q Okay. When is the last time you spoke with Kyle that		14 A Conrail.	
15 you know of, that you can recall?		15 Q Okay. Do you know what decade it would have been he	
16 A I am not sure. I couldn't even guess and give you a		16 retired?	
17 ballpark figure.		17 A Probably in the '90s. Could be in the early '80s -- or	
18 Q Okay.		18 late '80s, too.	
19 A I know that sounds bad but --		19 Q Okay, that's fine. Was your dad ever diagnosed with	
20 Q You are just being honest. That's all I ask. I		20 any forms of cancer?	
21 appreciate that. Your father's name, what was his		21 A Prostate cancer.	
22 name?		22 Q Was your dad ever diagnosed with any breathing	

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9 (33 to 36)

	33		35
1 problems?		1 A Not that I remember.	
2 A No.		2 Q Okay. Was your mom ever diagnosed with any forms of	
3 Q Okay. Did he ever have any breathing problems that you		3 cancer?	
4 noticed?		4 A I don't believe so.	
5 A Not that I am aware of.		5 Q Okay. Any heart trouble, I mean other than --	
6 Q Okay. Do you know if your dad ever filed suit against		6 A Yes.	
7 the railroad?		7 Q Okay. Any breathing problems that you know of?	
8 A I don't believe so.		8 A No, sir.	
9 Q Okay.		9 Q You say you have a sister?	
10 A Do you know, he did have a breathing problem. I		10 A Yes.	
11 apologize about that.		11 Q Okay. What's her name?	
12 Q That's all right.		12 A Vicki.	
13 A He was on oxygen before he died. That's -- Yeah.		13 Q V-I-C-K-I or V-I-C-K-Y.	
14 Q That's all right, I appreciate it. Do you know if he		14 A K-I.	
15 was formally diagnosed with any certain condition,		15 Q And Vicki's last name?	
16 breathing condition, or anything?		16 A Harris.	
17 A No, I never really got into that.		17 Q Where does Vicki live?	
18 Q Okay. Did you ever work with your dad?		18 A I really don't know.	
19 A No.		19 Q Okay. And Vicki is your only sister?	
20 Q Your mother's name?		20 A No. I have another sister --	
21 A Dorothy May.		21 Q Okay.	
22 Q M-A-E or M-A-Y?		22 A -- Linda.	
	34		36
1 A M-A-Y, I believe.		1 Q That's right. And Linda's last name?	
2 Q Okay. And how old was she when she passed?		2 A Blanchard. Vero Beach.	
3 A Eighty-three or eighty-five.		3 Q Another smart one. Linda married?	
4 Q Okay. Do you know what she passed away from?		4 A No.	
5 A Probably a heart attack.		5 Q Okay. Is Linda a smoker?	
6 Q Okay. If you don't know, just -- I mean, please let me		6 A Neither one of them.	
7 know.		7 Q Okay. They were never smokers?	
8 A Okay. I am not for sure.		8 A (Witness shook head back and forth.) I take that --	
9 Q That's fine.		9 Linda used to smoke, but she quit quite awhile ago.	
10 A Yeah.		10 Q Okay.	
11 Q She was having heart issues, is that fair to say, heart		11 A Sorry about that.	
12 issues?		12 Q No, that's all right. Vicki ever diagnosed with any	
13 A She fell and broke her hip, and the day she started		13 forms of cancer, that you know of?	
14 walking, she went to bed that night, and they found her		14 A Not that I know of.	
15 on her toilet the next morning.		15 Q Any breathing problems for Vicki?	
16 Q Okay.		16 A No.	
17 A So really that's all I know about it.		17 Q Okay. Linda ever been diagnosed with any forms of	
18 Q That's fine. Did your mom work?		18 cancer?	
19 A No.		19 A No.	
20 Q Okay. Did she work at all when you were a kid?		20 Q Any breathing problems that she has ever been diagnosed	
21 A No.		21 with?	
22 Q Okay. Did your mom smoke?		22 A No, not that I am aware of.	

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10 (37 to 40)

	37		39
1 Q Okay. Any other family members, other than your		1 I MR. PETRUCELLI: Sure.	
2 father, work for the railroad?		2 (Discussion off the record.)	
3 A Grandpa.		3 Q (By Mr. Horvat) Did you graduate high school?	
4 Q Okay.		4 A (By the Witness) Kelloggsville.	
5 A My cousins.		5 Q You have to say yes. You graduated --	
6 Q All right. I assume your grandfather is deceased?		6 A Yes.	
7 A Yes.		7 Q What was the name of the high school?	
8 Q All right. Your cousins, their names?		8 A Kelloggsville. K-E-L-L-O-G-G-S-V-I-L-L-E.	
9 A Dickersons. They are both retired.		9 Q What year did you graduate?	
10 Q Okay. Their first names?		10 A '75.	
11 A Jimmy.		11 Q Any sort of post secondary education or anything like	
12 Q Jimmy, and who else?		12 that?	
13 A Jimmy.		13 A Grand Rapids Junior College for a year-and-a-half.	
14 Q They are both Jimmy?		14 Q Okay. And did you get college credits, were you	
15 A Yeah.		15 studying for something?	
16 Q All right. I assume they are not brothers?		16 A I played football.	
17 A No. Yeah, father and son.		17 Q What position did you play?	
18 Q Okay. Did you ever work with either of them?		18 A Tailback.	
19 A No. They were in the car department.		19 Q All right. Pretty fast back in your day?	
20 Q Okay. Where did they work at?		20 A Yeah.	
21 A Grand Rapids.		21 Q And then you left school to go on the railroad?	
22 Q Okay. Do you have any idea when Jimmy the father left		22 A Yes.	
	38		40
1 the railroad?		1 Q Okay. Any reason -- particular reason why you left	
2 A No.		2 school?	
3 Q Okay. What about Jimmy the son?		3 A Wanted time to go to work.	
4 A No.		4 Q Did you have a job while you were in high school?	
5 Q Are both still living?		5 A No, I didn't.	
6 A As far as I know.		6 Q Okay. And I am pretty sure I know this answer, but you	
7 Q Okay. Any clue where they live?		7 didn't have a job while you were in school at Grand	
8 A None.		8 Rapids Junior College, did you?	
9 Q Anybody else, any other family members work for the		9 A No.	
10 railroad?		10 Q Okay.	
11 A Not that I am aware of.		11 A Not really, a bouncer at a bar.	
12 Q Okay. Any relatives that you know that have been		12 Q Okay. Football was your job?	
13 diagnosed with cancer, other than what you have told		13 A Yeah.	
14 me?		14 Q Was the first job that you actually -- other than, you	
15 A My sister's -- Linda's youngest boy died from cancer		15 know, being a bouncer, was the first job you actually	
16 related issues. I think he was about six.		16 had on the railroad?	
17 Q Okay.		17 A Yeah. You could say that, yeah.	
18 A That would have been in the '70s.		18 Q Maybe some other odd jobs you would do?	
19 Q Anybody else?		19 A No.	
20 A No.		20 Q Okay. Were you ever in the military?	
21 MR. HORVAT: Could we take like a two minute		21 A No.	
22 break.		22 Q So you --	

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11 (41 to 44)

	41		43
1	MR. PETRUCELLI: It is kind of like being in	1	Q From door to door.
2	the military, working for the railroad. Excuse me.	2	A Oh, door to door.
3	Q (By Mr. Horvat) So you first hired on in what,	3	Q From door -- or door to back wall.
4	November of '76, does that sound about right?	4	A Probably 200 feet.
5	A (By the Witness) Yeah.	5	Q Okay.
6	Q Okay. And where did you hire on at?	6	MR. PETRUCELLI: Don't guess.
7	A The diesel shop in Grand Rapids.	7	THE WITNESS: Okay.
8	Q Okay. What was your craft when you first hired on?	8	MR. PETRUCELLI: Really, don't guess. If you
9	A Laborer.	9	don't know, you don't know.
10	Q How long were you a laborer at the Grand Rapids diesel	10	THE WITNESS: I don't know.
11	shop?	11	Q (By Mr. Horvat) Okay. Try to give you -- Longer than
12	A I believe right around a year.	12	a football field?
13	Q So from about '76 to '77?	13	A (By the Witness) No. No.
14	A Yeah.	14	Q I assume there was large doors?
15	Q Okay. What was your duty as a laborer?	15	A Yeah, four of them.
16	A Clean the diesel shop, clean stuff, whatever I was told	16	Q Okay. Were there doors on both sides --
17	to do --	17	A Yes.
18	Q Okay.	18	Q -- to come in and then come out?
19	A -- to help the mechanics and electricians out.	19	A Yeah.
20	Q Okay. How big was the shop?	20	Q On both ends, excuse me.
21	A Two pit, inside shop, hold maybe six engines.	21	A On both ends, on both pits.
22	Q Did you work a certain shift?	22	Q And you hired on -- When you hired on in November of
	42		44
1	A Third.	1	76, you hired on with Conrail; correct?
2	Q Okay. What time was that?	2	A Yes.
3	A 10:30 to 6:30.	3	Q Are Conrail and NS the only two railroads you worked
4	Q 10:30 at night?	4	for?
5	A Yes. Sunday through Thursday.	5	A Correct. Excuse me.
6	Q Okay. Was that the only place you worked at, I mean	6	Q Yeah.
7	building-wise, at Grand Rapids, the diesel shop, when	7	A I did put a little bit in for the Kent, Barry, Eaton
8	you were a laborer?	8	Railway.
9	A Well, when I hosted engines like in Elkhart, I worked	9	Q That's okay.
10	in their diesel shop. When I hosted engines in	10	A I'm sorry.
11	Allentown, it was at the diesel shop, even though I was	11	Q Thank you for reminding me, I was going to ask you
12	an outside hostler.	12	about that. Were there -- At the Grand Rapids diesel
13	Q I guess what I am trying to ask you, was the diesel	13	shop, okay, were there windows in the shop, if you
14	shop the only building that you worked at in Grand	14	recall?
15	Rapids?	15	A Not that I recall.
16	A I might have to go to the car department and do	16	Q Okay. Were there any sort of exhaust fans or anything
17	something, or something like that, once in a while.	17	like that on the roof or inside of the shop that you
18	Q But most of your work would have been inside, in the	18	recall?
19	diesel shop?	19	A Not that I recall.
20	A In the diesel shop, yeah.	20	Q Okay. And you may have mentioned this before, you said
21	Q How long was that diesel shop, lengthwise?	21	it could hold six engines, that shop?
22	A From D rail to D rail?	22	A Yeah.

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12 (45 to 48)

<p>1 Q Okay. Your 10:30 to 6:30 shift, how many people would 2 approximately be working there?</p> <p>3 A Maybe eight.</p> <p>4 Q Okay.</p> <p>5 A That's a guess.</p> <p>6 Q Okay. Less than 20 people would be working?</p> <p>7 A No doubt.</p> <p>8 Q Okay. What would they be doing, let me ask you -- 9 Strike that. What other crafts were working?</p> <p>10 A Electricians, machinists, and people that did the 11 running work for outside.</p> <p>12 Q When you say "running work for outside," what do you 13 mean by that?</p> <p>14 A Like when engines would come in to be serviced, on the 15 outside service track, fuel, sand, brake shoes, any 16 problems, electrical or whatever, they could do right 17 there.</p> <p>18 Q Okay. And as a laborer, you are just kind of running 19 getting a tool, or helping any of these guys out; is 20 that correct?</p> <p>21 A Yeah.</p> <p>22 Q Okay. Did you have a supervisor on duty during that</p>	<p>45</p> <p>1 A Yeah, some of them did, yeah.</p> <p>2 Q Okay. Is that how you would have been exposed to 3 diesel fumes, whenever they were running inside of the 4 shop?</p> <p>5 A Yeah, or if I was working on them outside on the pit.</p> <p>6 Q Outside of the shop?</p> <p>7 A Yeah, on the running track or whatever.</p> <p>8 Q Okay.</p> <p>9 A Putting them away, yeah.</p> <p>10 Q Okay. Whenever you were working inside of the shops, 11 are the engines -- the engines are running, I believe 12 you said?</p> <p>13 A Sometimes.</p> <p>14 Q Sometimes, okay. Why would they be running?</p> <p>15 A Well, if they had road power or something that needed 16 the brakes taken (sic) up, it was a bad -- Back then, 17 we used to get a lot of snow in Grand Rapids, and 18 instead of working on them on the pit, they would bring 19 them inside, getting road power ready.</p> <p>20 Q Okay.</p> <p>21 A It was just easier to work on them, work for the guys.</p> <p>22 Q Would they be brought in -- obviously, sometimes they</p>	47
<p>1 shift?</p> <p>2 A Yes.</p> <p>3 Q Do you recall his name?</p> <p>4 A Dave Pixler.</p> <p>5 Q With a P?</p> <p>6 A I believe so.</p> <p>7 Q Okay. P-I-X-L-E-R, does that sound about right?</p> <p>8 A Sounds about right.</p> <p>9 Q Okay. Do you have any idea if Dave is still alive?</p> <p>10 A Not a clue.</p> <p>11 Q All right. That one year you were a laborer at Grand 12 Rapids, the diesel shop, do you believe you were 13 exposed to diesel fumes during that one year?</p> <p>14 A Oh, yeah.</p> <p>15 Q How so?</p> <p>16 A Just from working on them and having them there.</p> <p>17 Q Okay.</p> <p>18 A Having them around.</p> <p>19 Q Whenever they were brought into the shop, okay, were 20 they running whenever they were brought into the shop?</p> <p>21 A Some were, some weren't.</p> <p>22 Q Okay. Would they run inside of the shop?</p>	<p>46</p> <p>1 are running whenever they are brought in?</p> <p>2 A Yeah.</p> <p>3 Q And then shut down?</p> <p>4 A They could be, yeah, or they would be left running to 5 fix what they needed to be fixed, to go out to get on 6 the train.</p> <p>7 Q How often would that happen, when they were left 8 running?</p> <p>9 A I am not sure.</p> <p>10 Q Okay. How long would they be in there, left running, 11 if you can recall?</p> <p>12 A I don't recall.</p> <p>13 Q Are you talking hours, minutes?</p> <p>14 A I can't say.</p> <p>15 Q Okay. Are the doors kept open in that shop? Were they 16 kept open in that shop? Excuse me.</p> <p>17 A They could be, sometimes they very well could be, yeah.</p> <p>18 Q Okay. Were they kept open in the summer?</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 A A lot of times they were.</p> <p>22 Q Were they kept open in the winters?</p>	48

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13 (49 to 52)

	49		51
1 A Not really.		1 A You know what I mean.	
2 Q Okay.		2 Q You were working passenger lines?	
3 A Not that I can recall anyways. It got cold.		3 A Yeah.	
4 Q Whenever you were working outside -- You said you were		4 Q But you worked for Conrail?	
5 working outside in the pit. You are physically outside		5 A Yes, the Michigan line.	
6 of a building; is that correct?		6 Q What was your job or craft?	
7 A Yes.		7 A Fireman.	
8 Q Okay. What are you doing, when you are outside working		8 Q Okay. How long were you a fireman at Jackson?	
9 on the engines, or helping work on the engines?		9 A Till I got set up as an engineer --	
10 A I might be cleaning the windows, sweeping out the cabs,		10 Q Okay.	
11 helping somebody that needed a hand.		11 A -- or sent to school as an engineer.	
12 Q Okay. What part of your job -- If you can quantify it,		12 Q Do you remember when that was?	
13 great. If you can't, let me know. What part of your		13 A I believe -- I believe I went to school in -- I believe	
14 job -- what percentage of your job as a hostler at		14 '79, and when you pass your promotion, they gave you a	
15 Grand Rapids was inside versus outside?		15 seniority date as your hire-out date as a fireman, so	
16 A As a hostler?		16 my fireman date was my engineer date of '77.	
17 Q Yeah, that one year, whenever you were a laborer over		17 Q Okay. Makes sense. If you could describe for me what	
18 there at Grand Rapids.		18 a fireman does?	
19 A Oh, I really couldn't say.		19 A Help the engineer.	
20 Q Okay. Could you say one was more than the other?		20 MR. PETRUCELLI: What a fireman did?	
21 A No.		21 THE WITNESS: What the fireman did.	
22 Q Okay. Do you have some sort of lunch break or anything		22 MR. HORVAT: Yeah, that's true.	
	50		52
1 like that, whenever you worked that shift?		1 THE WITNESS: What a fireman did, help the	
2 A Yes.		2 engineer.	
3 Q Okay. Where would you take your lunch?		3 MR. PETRUCELLI: They don't have fireman any	
4 A There.		4 more, do they?	
5 Q In the shop?		5 MR. HORVAT: No.	
6 A In the lunchroom.		6 MR. PETRUCELLI: They did.	
7 Q Okay. There was a lunchroom inside of the shop?		7 Q (By Mr. Horvat) What else did you do as a fireman,	
8 A Yeah.		8 other than help the engineer?	
9 Q It was a separate room?		9 A (By the Witness) That was it.	
10 A Yeah.		10 Q Okay.	
11 Q How long was your lunch?		11 A That was enough.	
12 A I think 20 minutes, half an hour, something like that.		12 Q So you were there for about two years, as a fireman at	
13 Could be longer if you had all of your work done till		13 Jackson?	
14 the next deal.		14 A Yeah.	
15 Q All right. What was your next job after you worked		15 Q Were you working in the yard, or were you over the	
16 there -- worked at Grand Rapids as a laborer?		16 road?	
17 A I went firing out of Jackson, Michigan, on Amtrak.		17 A Well, sometimes I -- I fired some freight, too, like	
18 Q You worked for Amtrak?		18 the east end pool, or whatever. It just -- wherever	
19 A No.		19 your seniority would go. Sometimes I would have to go	
20 Q Okay.		20 back to Grand Rapids for a little bit, sometimes back	
21 A That was before Amtrak went Amtrak.		21 to Jackson. A lot of it depended on vacations.	
22 Q Okay. So you worked --		22 Q Sure. I know you were low man on the totem pole at	

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14 (53 to 56)

	53		55
1	that point in time?	1	Q Okay. How so?
2	A Yeah.	2	A On freight and yard, just from the other engines
3	Q So sometimes you would go back to Grand Rapids and work	3	working in the yard, and the exhaust that was in the
4	in the yard?	4	yard, and then on the freight trains when I was firing,
5	A Yeah.	5	because of the holes in the cabs and stuff.
6	Q I assume you were making up trains and things like	6	Q What about when you were running passenger, do you
7	that?	7	believe you would have been exposed to diesel fumes?
8	A Yeah.	8	A Yeah, but not as much.
9	Q And you worked in the Jackson yard?	9	Q Okay. How so as on the passenger lines?
10	A Yeah.	10	A Well, on the Michigan lines, we had them turboliners
11	Q Making up trains, as well?	11	that come over from France.
12	A Yeah. Or taking a train Jackson to Detroit or – as a	12	Q Do you know who manufactured those?
13	fireman, learning the route.	13	A No, I don't, but they were jet engines with direct
14	Q What runs did you make over that two-year period that	14	drive.
15	you recall?	15	Q Whenever you were up there in the yard, you say you
16	A Jackson to Detroit, Jackson to Elkhart, freight-wise.	16	have been exposed to diesel fumes in the yard over that
17	Q Yeah. You did passenger, as well?	17	time period?
18	A Jackson to Niles, Niles to Detroit.	18	A Right.
19	Q That would have been passenger?	19	Q I assume, is that the Jackson and same for Grand
20	A Yes.	20	Rapids?
21	Q Did you work more passenger than freight when you	21	A Yeah, anywhere.
22	were -- over this two-year period, if you can quantify	22	Q And are you out -- physically outside of a building
	54		56
1	it, if you can recall?	1	whenever you are talking about that time?
2	A I can't. I can't even guess – give you a good guess.	2	A Yeah.
3	Q Okay. Did you make -- Were you on the road more than	3	Q Do you know who manufactured the freight trains you were
4	working in the yards?	4	discussing?
5	A Yeah.	5	A Electric EMDs, General Motors and General Electrics.
6	Q Okay.	6	And when I first hired out there, they still had some
7	A Yes.	7	ALCos, but they got rid of them, so mostly General
8	Q And when I say 'on the road,' I am meaning freight and	8	Motors and GE, General Electric.
9	passenger, is that fair?	9	Q Okay. Were the fumes worse on one than the other?
10	A Correct. Yep.	10	A Not that I can remember.
11	Q Okay. Any way you can quantify road versus yard work?	11	Q Okay. Do you recall the names of any of your engineers
12	A No.	12	that you worked with over that two-year period?
13	Q Okay. But you said you worked more road work than yard	13	A Yeah.
14	work, is that fair?	14	Q Okay.
15	A Yeah.	15	A Jay Sharon, Fernald, J.B. Frizell, Larry Richardson,
16	Q Okay. Are you doing all right, sir?	16	Clyde Hathaway, Phillips. I can't think of – Earl,
17	A Yeah.	17	Earl Phillips (phonetic spellings).
18	Q Okay. LP doing all right?	18	Q Okay. Do you still talk to any of these guys?
19	During that two-year period, whenever you	19	A No.
20	were a fireman, do you believe you would have been	20	Q Do you know if any of them are still alive?
21	exposed to diesel fumes?	21	A Probably not.
22	A Um-h'm. Yes.	22	Q Okay. You talked about it briefly, but how would you

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15 (57 to 60)

	57		59
1	have been exposed to diesel fumes when you were riding	1	actually back then.
2	on the freight trains as a fireman?	2	Q Okay. Could you see the exhaust coming in?
3	A Just the exhaust, coming up in the cab from the cab	3	A No.
4	floors or the cabinets.	4	Q Okay. Could you smell it?
5	Q Okay.	5	A Yeah.
6	A Can I grab a coffee?	6	Q Okay. During that two-year period, did you ever report
7	Q Oh, absolutely.	7	to your supervisor or the engineer the diesel exhaust
8	(Discussion off the record.)	8	problem?
9	Q (By Mr. Horvat) All right. You talked about the cab	9	A Yes.
10	floors and the cabinets. Okay. Whenever you were	10	Q Okay. Did you ever fill out a grievance?
11	riding freight during that two-year period, are you	11	A No.
12	riding long hood or short hood forward?	12	Q Who did you report it to?
13	A (By the Witness) Mostly it was short hood forward,	13	A Engineer, and then he would tell the yardmaster or
14	except on the locals. Then one way you are going short	14	trainmaster, whatever, if he felt that.
15	hood, and the next you are going long hood.	15	Q Okay. Could you have filled out a grievance form as a
16	Q Okay. Go ahead.	16	fireman?
17	A And on the locals, they were usually GP7s and GP9s.	17	A I don't know. I never -- I never did as a fireman.
18	Q Those are the older ones?	18	Q Okay. So your next job in the '80s, where did you go
19	A Yeah.	19	work?
20	Q Where is the exhaust stack on the short hood forward?	20	A Allentown.
21	A Behind you.	21	Q Okay. So 1980 I guess we are up to. You go to
22	Q Okay. Silly question, then long hood, is it in front	22	Allentown?
	58		60
1	of you?	1	A That's right around that time, yeah. You know, I am
2	A (Witness nodded head.)	2	not --
3	THE REPORTER: I am sorry. Would you answer	3	Q Well, at some point in time, you went to work for
4	verbally, please?	4	General Motors and for Kent, Barry?
5	MR. HORVAT: I am sorry.	5	A Yes.
6	THE WITNESS: Oh, I am sorry.	6	Q When did you go to work for General Motors?
7	MR. HORVAT: I will ask it again.	7	A When I come back from Allentown.
8	Q (By Mr. Horvat) The long hood, the stack is in front	8	Q Okay.
9	of you?	9	A Because they furloughed me within 30 days after moving
10	A (By the Witness) Yes.	10	back.
11	Q I told you at some point in time we will probably	11	Q So you are working Allentown for about a year, is that
12	become conversational.	12	about right --
13	Did you run more locals than freights?	13	A Yeah.
14	A Not in that two-year period.	14	Q -- what you said?
15	Q Okay.	15	A Within a year, yeah.
16	A But later on, yes.	16	Q Do you get transferred there, or did you put in for a
17	Q If you are running short hood, how would the exhaust	17	transfer, or how did that work? Did you --
18	come in through the cab floors?	18	A They sent me a letter asking me if I wanted to go.
19	A I don't know. You know, I don't -- I don't -- you	19	Q Okay. And what craft are you when you are working in
20	know, it wasn't vacuum cabs.	20	Allentown?
21	Q Okay.	21	A Engineer.
22	A They had holes in the floors, holes in the car bodies	22	Q Okay. Is it the Allentown yard you are working out of?

Transcript of Robert Newkirk
Conducted on February 8, 2017

16 (61 to 64)

	61		63
1 A Yes. Diesel shop, because I was an outside hostler.		1 A But they had sand and fuel. The pits were big.	
2 Q What does an outside hostler do?		2 Q But you are physically working outside, like in the	
3 A Runs power to anywhere that need it, tie on the train		3 elements and --	
4 in the yard, pump air, bring a set of power to		4 A Yeah. I mean, all the engines on the pits are running.	
5 somewhere else for another train, or just do outside		5 The ones in the shop might be down, or pulled outside	
6 the house hostling.		6 of the shop, or running, so there was a lot of exhaust	
7 Q Okay. Making up trains, moving trains around?		7 hanging in Allentown, Pennsylvania.	
8 A No. Just the power.		8 Q So you worked there for about a year, got transferred	
9 Q Okay.		9 back to Detroit -- or went back to Michigan, excuse me?	
10 A You were stationed -- Allentown had a big diesel shop,		10 A Michigan, yeah, District A.	
11 the old style, the round --		11 Q And you got furloughed?	
12 Q Turntable?		12 A Yeah. That's when I went to work for General Motors.	
13 A Yeah. The -- It would hold like three, six axle units,		13 Q Was that the first time you were furloughed?	
14 and they had the old style outhouse. And you were in		14 A I believe so.	
15 the trailer, and when they needed you, they called you,		15 Q Okay.	
16 and that's when you went to work.		16 A Well, no, it was the second, because that's when I got	
17 Q So you are pulling engines in and out, moving them?		17 the letter, the first time they furloughed me.	
18 A That was the inside hostler's job.		18 Q Well, how long were you furloughed the first time?	
19 Q Okay.		19 A Not very long. When I got that letter, I went.	
20 A They had like two or three inside hostlers and two or		20 Q Was it for more than two weeks, that first time?	
21 three outside hostlers. They had engines up the butt.		21 A Yeah. I really couldn't guess. It has been so long	
22 Q So this may seem like a silly question, but as an		22 ago.	
	62		64
1 outside hostler, you are working outside; is that		1 Q That's all right. Like I said, I am going to be asking	
2 correct?		2 you questions to cause you to reach back so --	
3 A Outside of the diesel shop.		3 A I don't have an answer for you on that.	
4 Q Yeah.		4 Q And you went to General Motors for about four years?	
5 A When you took your engine -- you are going outside --		5 A Yeah.	
6 yeah.		6 Q Okay. From about '81 to '85?	
7 Q Did you make any runs out of Allentown?		7 A Yeah, sounds in the ballpark.	
8 A Outside hostler.		8 Q Okay. That's the only place you have worked over that	
9 Q Okay. Did you take them any industries or anything		9 four-year period?	
10 like that, or just working in the yard?		10 A Yeah, except I don't know the KB&E --	
11 A Yeah, wherever they needed their power.		11 Q Yeah.	
12 Q Okay. And would you have worked around or been exposed		12 A -- date, I'm sorry.	
13 to diesel fumes when you did that job --		13 Q That's okay. We will talk about that in a second.	
14 A Yeah.		14 What General Motors plant did you work at?	
15 Q -- at Allentown?		15 A Number 1 stamping plant, and I also worked on one,	
16 A Yeah.		16 Burlingame and Burton, which was the diesel in that	
17 Q Okay. That's from working around the engines --		17 period.	
18 A Yeah.		18 Q Burlingame?	
19 Q -- outside?		19 A And Burton.	
20 A Yeah. I mean, excuse me. It was a big pit. They had		20 Q Burton, where is that located?	
21 two pits with -- I don't know how long they were.		21 A Burlingame and Burton.	
22 Q Okay.		22 Q All right.	

Transcript of Robert Newkirk
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17 (65 to 68)

	65		67
1 A	That's – Back then it was called diesel – GM Diesel.	1	MR. PETRUCELLI: Off the record.
2 Q	Okay.	2	(Discussion off the record.)
3 A	I believe.	3 Q	(By Mr. Horvat) How long did you work at the
4 Q	Where is the No. 1 stamping plant?	4	36th Street plant?
5 A	It used to be at 36th Street.	5 A	(By the Witness) I am not really sure. Longer than I
6 Q	And?	6	did at the other one.
7 A	Buchanan.	7 Q	Okay.
8 Q	Okay.	8 A	How is that?
9 A	But it is gone.	9 Q	That's fine. That's fine. So did you do anything
10 Q	What did you do whenever you worked at the 36th Street	10	else, other than stock chaser at that plant?
11	and Buchanan?	11 A	No, not really. That was – I did drive a towmotor for
12 A	Stock chaser.	12	a while, but not very long. I'd rather stock chase.
13 Q	Okay. What does a stock chaser do?	13 Q	What kind of cars were they building?
14 A	Pick up – Put parts on a conveyor so a welder can make	14 A	The bigger – the bigger ones, the bigger front doors,
15	something out of it.	15	the hoods, and stuff like that.
16 Q	Correct me if I am wrong, so, you know, you get Part A	16 Q	Okay. Would they paint them there, as well?
17	to the welder, and the welder welds it onto the car.	17 A	No, just stamping.
18	Is that how it works?	18 Q	Okay. When you went over to the Burton plant, what was
19 A	Well, they are making a front door.	19	your job?
20 Q	Yeah.	20 A	I ran a machine that ground lifters, put a groove in a
21 A	Okay. They've got this part. You supply this part.	21	lifter, so when it went down, it came back with oil, to
22	It goes down the line, and maybe three – three over,	22	keep it oiled.
	66		68
1	you give them another part, just keep the front door	1 Q	Okay. You called it the GM Diesel. Why was it called
2	line stocked with parts, so at the different places	2	the GM Diesel?
3	they did it, they had the parts to keep it going.	3 A	Because they made engine parts.
4 Q	Okay. Would you have been exposed to welding fumes	4 Q	Okay. I assume that was a large plant, as well?
5	whenever you worked there?	5 A	Yeah.
6 A	They had fans –	6 Q	Would you have been exposed to any fumes, or anything
7 Q	Okay.	7	like that at that plant, that you know of?
8 A	– and exhaust, but who knows. I mean, very well could	8 A	No, that was a real clean plant.
9	have – I mean, it is a big plant. And it was just the	9 Q	Did you work there about four years for GM, about that
10	weld that they come down and (indicating) hit the	10	time?
11	button.	11 A	No. I spent longer in the 36th Street stamping.
12	MR. PETRUCELLI: Spot welding.	12 Q	I'm sorry, altogether for GM you worked for about four
13	THE WITNESS: Spot welding, yeah, that's it.	13	years?
14	MR. PETRUCELLI: Sorry.	14 A	Yes.
15	MR. HORVAT: No, that's okay.	15 Q	And then you worked for the Kent, Barry switching?
16	THE WITNESS: It wasn't like somebody taking	16 A	It might have been before that, I did.
17	a thing and welding like --	17 Q	Okay.
18	MR. PETRUCELLI: Seam welding.	18 A	But it wasn't -- I didn't work at that Kent, Barry that
19	THE WITNESS: Yeah. Yeah, spot welding,	19	long before it went under.
20	exactly.	20 Q	What did you do for the Kent, Barry?
21 Q	(By Mr. Horvat) Was the plant dirty, dusty?	21 A	Anything and everything.
22 A	(By the Witness) No, not – no.	22 Q	Okay.

Transcript of Robert Newkirk
Conducted on February 8, 2017

18 (69 to 72)

1 A Ran the engine, did track inspection, all kinds of 2 stuff. It was a -- I don't know how to say it. 3 Q It was a minority-owned railroad? 4 A Yeah. 5 Q It only -- Was it operating for like a year or so? 6 A I'm not really sure. 7 Q Okay. How long did you work there? 8 A Not quite a year. 9 Q Okay. How many engines did they have? 10 A One. 11 Q Did you make any runs or anything like that, or just 12 yard work? 13 A They would go to like Hastings, something like that, 14 yeah. Did I do that? Yeah. A couple of times, yeah. 15 It wasn't an everyday thing. 16 Q Okay. How did you find that job? 17 A I had a friend that worked there. 18 Q Okay. What is his name? 19 A Frank Lewis. 20 Q Is Mr. Lewis still alive? 21 A Yes, as far as I know, he is. 22 Q Do you know where Mr. Lewis lives?	69	1 A Yeah. So like if he had a day off and they needed 2 something done, I could run the engine for them because 3 I was -- 4 Q Okay. 5 A -- a promoted engineer. 6 Q Okay. 7 A But my job wasn't to run the engine there. It was in 8 the track department -- 9 Q Okay. 10 A -- the two-guy track department. 11 Q Got your exercise? 12 A Huh? 13 Q Got your exercise there? 14 A Yeah, two-man gang. 15 Q The way you described being exposed to diesel fumes 16 while riding on the freight trains with Conrail, would 17 you have been exposed the same way when you worked at 18 Kent, Barry -- 19 A Yeah. 20 Q -- in the yard, and then riding on them, as well? 21 A They didn't have a yard. 22 Q Okay. But same way riding on them?	71
1 A No, I don't. 2 Q Okay. 3 A The last I knew -- Well, he worked at Steelcase. 4 Q That's the furniture place? 5 A Yes, sir. 6 Q Ran engines, track inspection, anything else you recall 7 doing there? 8 A No. 9 Q What was -- Do you remember the name of the individual 10 that owned it, the railroad? 11 A No, I don't. 12 Q Who was your boss there, do you know? 13 A Frank. 14 Q Okay. Would you have been exposed to diesel fumes when 15 you worked there? 16 A Yeah. It was a diesel engine. It was just a pup. 17 Q Do you know who manufactured that engine? 18 A General Motors, I believe. 19 Q Would you have been exposed riding on the engine? 20 A Yeah. If I -- Yeah. Their engineer, his name was 21 Robert Janek. 22 Q J-A-N-E-K?	70	1 A Yeah. 2 Q Okay. Were you ever injured while working for the 3 Kent, Barry? 4 A Yep. 5 Q Okay. What kind of injury did you have on the Kent, 6 Barry? 7 A I tore my left -- I can't think of the name they call 8 it, your knee. 9 Q ACL? 10 A No. 11 Q MCL? 12 A No. 13 Q Meniscus? 14 A Yeah. Yeah. 15 Q Were you off work for a period of time? 16 A Yeah. 17 Q How long? 18 A I am not really sure. After that happened, I think 19 they kind of went down. 20 Q Okay. You put them under? 21 A Yeah. 22 Q And when did you go back to Conrail?	72

Transcript of Robert Newkirk
Conducted on February 8, 2017

19 (73 to 76)

	73		75
1 A I am not really sure. It was General Motors, after		1 Q Okay. How many days a week were you working as an	
2 working at GM.		2 engineer there at Elkhart?	
3 Q Okay. All right. Do you recall when you went back to		3 A Probably every day, sometimes double. If I was a	
4 Conrail after you worked for GM?		4 reserve engineer, in that time frame, I went to work	
5 A No, I don't know the date or —		5 when they called me.	
6 Q Okay. Was it in the '80s still?		6 Q Okay. You didn't have a regular job, you were reserve,	
7 A Yes, I believe so.		7 so you were working off the extra board?	
8 Q Okay. Well, do you recall what job you went back to or		8 A No. The reserve — They set up the reserve engineer	
9 where you were working at?		9 board so people wouldn't leave and go to a different	
10 A There was a time there that they had reserve engineers,		10 railroad. So they paid you a guarantee to sit home,	
11 and I don't know if it was then or if I went back to		11 and one day they would call you and say, hey, would you	
12 Grand Rapids first, because it was considered an		12 go to Cleveland to take — yeah, you know, it was	
13 outlying point, and people that were furloughed could		13 basically to keep people on the railroad. They didn't	
14 bid on outpost jobs, so I am not really sure.		14 want to spend the money sending you to engineer school	
15 Q Okay.		15 for you to go hire out on the Burlington Northern.	
16 A If that makes sense to you.		16 Q Sure.	
17 Q Where is the next yard you recall working at, whenever		17 A I can't remember the time frame, but basically that's	
18 you come back from General Motors?		18 what that was.	
19 A It would have been Elkhart.		19 Q Okay. Do you remember where you worked after Elkhart?	
20 Q That was your home yard?		20 A Grand Rapids, I believe.	
21 A Yeah.		21 Q That was the next yard you would have worked out of, I	
22 Q Okay. And you were working as an engineer?		22 guess would have been your home yard, I guess?	
	74		76
1 A Reserve engineer.		1 A Yeah.	
2 Q Reserve engineer, okay. Do you recall how long you		2 Q How long was that?	
3 worked in Elkhart?		3 A I am not sure.	
4 A No, I do not.		4 Q Okay.	
5 Q Okay. More than five years?		5 A I mean it is all blended in.	
6 A No.		6 Q Yeah. No, I understand.	
7 Q Okay.		7 A I — I will wait.	
8 A But I might have come back before that and worked in		8 Q Do you recall working out of Toledo?	
9 Grand Rapids as an engineer, on an outpost job, because		9 A Yeah.	
10 I could bid them. If it went no bid, they would let me		10 Q When did you work out of Toledo?	
11 work them. So I am not sure on the —		11 A I got —	
12 Q That's fine.		12 Q Go ahead.	
13 A That's being honest.		13 A I left Grand Rapids, and I went to work out of Bryan,	
14 Q No, like I said, I truly understand that it is a long		14 Ohio. From Bryan, Ohio, I went to Toledo.	
15 time ago.		15 Q Okay.	
16 A Yeah.		16 A And I worked Toledo to Elkhart, and then I worked	
17 (Discussion off the record.)		17 Toledo to Chicago.	
18 Q (By Mr. Horvat) Do you recall any of the runs you made		18 Q Are these all with Conrail, or at some point in time	
19 from Elkhart?		19 you went with NS?	
20 A (By the Witness) Elkhart to Cleveland, Elkhart to		20 A Yes. Well, there was some time, I think it was 1999 it	
21 Wayne, Elkhart to Lansing, Elkhart to Chicago, that's		21 went to NS. That's NS.	
22 it.		22 Q Do you recall what yard you were working out of when it	

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20 (77 to 80)

	77		79
1	turned to NS?	1	Rapids, are you running long hood or short hood
2	A Bryan, Ohio. That's a fact.	2	forward?
3	Q All right.	3	A Short hood. They were road units on the road jobs, and
4	A I will never forget the day.	4	on the local, you ran them short hood down, long hood
5	Q Why do you say that?	5	back, or vice versa, however.
6	A Because they wanted to fire me. No. The Spangler	6	Q Okay.
7	Candy Company is a big business in Bryan, Ohio. And	7	A You know.
8	the conductor I was working with threw the switch, and	8	Q Is it fair to say you ran more short hood than long
9	give me a go-ahead, and I went ahead. And he didn't	9	hood whenever you were working out of Grand Rapids?
10	lock the switch down, so the engine went on the ground,	10	A No, because back when they got rid of the Jeeps, then
11	and the switch went through the fuel tank, and all of	11	you -- then you -- I don't know how to explain it.
12	the fuel ran out in the Spangler Candy Company.	12	When you worked out of Grand Rapids into Elkhart, you
13	And the NS was like, the engineer didn't ask	13	ran short hood lead, but when you went to work out of
14	for a double-check. The guy on -- The union man goes,	14	Elkhart, you ran short hood back. But if you had the
15	well, we go by Conrail rules and double-check ain't in	15	locals, long or short, whatever, it just -- it just
16	our rule book. He didn't do nothing wrong. We want	16	depended on which way it was facing that day, if you
17	him fired. Well, you can't fire him. So that's how	17	worked short hood down or long hood down.
18	that happened.	18	Q Okay, okay.
19	Q All right.	19	A If that makes any sense to you.
20	A First day of the takeover.	20	Q Would there be less diesel fumes running short hood
21	Q June 1st?	21	than long hood forward? Is that fair?
22	A Yeah. I will never forget that day. And the kid was	22	A About the same.
	78		80
1	crying, the conductor. You will laugh about this one	1	Q You would still be exposed to the same amount of fumes
2	day, Tommy, you really will. They are going to fire	2	running short hood --
3	me. No, they won't, they want to fire me.	3	A Yeah.
4	Q The runs you described earlier, like Toledo to Chicago,	4	Q -- than running -- as running long hood, excuse me?
5	Bryan to Chicago, Bryan to Elkhart, did any runs change	5	A Yeah. Well, you've got more in the cab from the
6	over that time period from -- you know, from the time	6	windows and stuff running long hood lead.
7	you were working at Grand Rapids until the time you	7	Q Would you ride with the windows open in the summer?
8	retired?	8	A Yeah.
9	A What now?	9	Q Okay. Would you -- Would the windows be closed in the
10	Q That's a terrible question.	10	winter?
11	A You lost me.	11	A Yeah. You might have to crack them, though, to keep
12	Q I lost myself. Whenever your home yard was Grand	12	the moisture down.
13	Rapids, whenever you were an engineer, what runs did	13	Q Okay. Would fumes come in the open windows?
14	you make?	14	A I imagine so. You couldn't see them, you know, if they
15	A Grand Rapids to Elkhart.	15	were coming up through the floor or through the
16	Q Okay.	16	cabinets. You used to get a lot of air coming through
17	A Elkhart to Grand Rapids, and I used to work the local	17	the cabinets.
18	out of Grand Rapids, the Plainwell Otsego.	18	Q You couldn't see the fumes, but you could smell them?
19	Q Okay.	19	A Yeah.
20	A And I worked a lot of work trains out of Grand Rapids.	20	Q Okay. And you couldn't tell if they were coming
21	Q Okay. Whenever you were working or you were making the	21	through the floor, or the cabinets, or through the
22	runs to -- Grand Rapids to Elkhart, Elkhart to Grand	22	windows?

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21 (81 to 84)

	81		83
1 A Right.		1 A No.	
2 Q Do you recall what runs you made with NS?		2 Q Okay. You worked continuously pretty much until the	
3 A Yeah. I worked out of Bryan, Ohio.		3 time you retired?	
4 Q Okay.		4 A Yeah. Yes. I catch myself once in a while.	
5 A I usually went west, to Ligonier, and Ligonier back to		5 Q Whenever NS took over in '99, did any of your duties as	
6 Bryan, when I worked out of Bryan. When I worked out		6 an engineer change?	
7 of Toledo, Toledo to Elkhart, and then Toledo to		7 A No, I don't believe so.	
8 Chicago.		8 Q Did any rules change whenever NS took over in '99, that	
9 Q Okay. And whenever you retired, you were working out		9 you know of?	
10 of Toledo; is that correct?		10 A No. They still went by Conrail rules on the day of the	
11 A Yes. I was in Toledo to Chicago long pool when I		11 takeover.	
12 retired.		12 Q What about in the years afterwards that you worked for	
13 Q Okay. Did you have a regular run that you had when you		13 NS, did any of the rules change, that you know of?	
14 worked out of Bryan?		14 A When I was there, I believe it was still by Conrail's	
15 A Yeah. I can't remember the symbol of it.		15 rules, but they did start implementing some of NS	
16 Q Was that Bryan to Ligonier?		16 stuff.	
17 A Yeah.		17 Q For example, like what?	
18 Q And whenever you worked out of Toledo, did you have a		18 A Double-check, so if a guy threw a switch, you had to	
19 regular run?		19 ask him double-check. And if you didn't and something	
20 A In the short pool, no. In the long pool, they did put		20 happened, then you got fired because you didn't ask him	
21 a preferred pool in for a little bit, and I did work a		21 if he double-checked it.	
22 preferred job for a little while, and they take them		22 Q Were you working any yard jobs in Bryan when you worked	
	82		84
1 off, put them on, take them off.		1 with NS?	
2 Q Okay. Are you still running locals out of Bryan and		2 A No.	
3 Toledo?		3 Q Okay.	
4 A Are they still?		4 A They had all locals out of there.	
5 Q No. Were you still running locals out of Bryan and		5 Q Okay.	
6 Toledo, or were you just over the road, or --		6 A They had I think four or five locals that worked out of	
7 A Out of Bryan, that's where I worked the local out of.		7 Bryan.	
8 Q Okay.		8 Q Okay. And Toledo, you were just running --	
9 A Toledo, I worked Toledo to Elkhart, which was road,		9 A Freight.	
10 Toledo to Chicago, which was road.		10 Q -- freight road jobs, okay. You receive an RRB	
11 Q You were running short hood forward on those road		11 pension?	
12 jobs --		12 A Disability.	
13 A Yes.		13 Q Approximately how much do you receive a month?	
14 Q -- Toledo to Elkhart, and Toledo to Chicago?		14 A Right around 3,000.	
15 A Yes.		15 Q Is that your only source of income?	
16 Q What about local at Bryan?		16 A Yes.	
17 A If you had two engines, they were usually bi, so you		17 Q You don't have any rental properties or anything like	
18 worked short hood both ways. If you only had one unit		18 that?	
19 you worked down short, long back, or vice versa.		19 A No.	
20 Q Okay. Other than the furlough, whenever you worked for		20 Q Okay. Whenever you come up here with Mr. Barwiller,	
21 GM and the Kent, Barry, did you ever have any other		21 how long do you usually stay?	
22 furloughs after that?		22 MR. PETRUCELLI: That's kind of new. I mean,	

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22 (85 to 88)

	85		87
1	it just started in December of 2016, Counsel, so I'm	1	like --
2	not sure -- I mean, we have a two-month window here,	2	Q The cold does?
3	so --	3	A -- this does now. It is --
4	Q (By Mr. Horvat) Is this the first time you have done	4	Q Okay.
5	it?	5	A It is hard on me.
6	A (By the Witness) Yeah.	6	Q Okay. You haven't worked since you left the railroad?
7	MR. PETRUCCELLI: Number one, Osseo is a long	7	A No.
8	ways from here.	8	Q Okay. In your answers to interrogatories, you named a
9	MR. HORVAT: Okay.	9	bunch -- five co-workers. John Fortice (phonetic
10	THE WITNESS: It is 15 miles from Bryan,	10	spelling), is that who -- if I pronounce his name
11	Ohio. It is like between Bryan, Ohio, and Hillsdale,	11	correctly?
12	Michigan, right off --	12	A Yes.
13	MR. PETRUCCELLI: It is 500 miles from here.	13	Q What did John do for the railroad?
14	So I am just trying to help you out.	14	A He is an engineer.
15	MR. HORVAT: I appreciate it. That's fine.	15	Q Does he still working for the railroad?
16	MR. PETRUCCELLI: It is all new, is it not,	16	A I believe so.
17	this new living arrangement?	17	Q Okay. He lives in Michigan?
18	THE WITNESS: Yeah. Yeah. I knew John's	18	A Yes.
19	dad, and I know John.	19	Q Okay. When is the last time you talked with John?
20	MR. PETRUCCELLI: Okay. I am just trying to	20	A A couple years ago.
21	help him out -- because he didn't have that information	21	Q Okay. Do you know where John works out of?
22	in the answers to interrogatories.	22	A I believe Toledo. I could be wrong. I haven't spoke
	86		88
1	THE WITNESS: Okay.	1	to him in quite a while.
2	MR. PETRUCCELLI: So you are trying to -- you	2	Q That's fine, the best of your knowledge. Did you ever
3	kind of changed the picture here of your lifestyle, and	3	make any runs with John?
4	he is trying to find out what your lifestyle is, which	4	A Yeah, because he -- I have worked with him in Bryan
5	he is entitled to find out. I just want to help both	5	before.
6	of you get on the same page here.	6	Q Okay.
7	MR. HORVAT: Okay.	7	A He hired out as a conductor, and then he got promoted
8	THE WITNESS: Okay.	8	to an engineer.
9	Q (By Mr. Horvat) Do you have any plans to live anywhere	9	Q So you ran the local jobs out of Bryan with
10	else, like in the summer, or in the winter, or anything	10	Mr. Fortice?
11	like that?	11	A Maybe once or twice. It wasn't regular or anything
12	A (By the Witness) I hope to, yeah.	12	like that. In fact, I might not have ever worked with
13	Q Okay.	13	him.
14	A Yeah.	14	Q Mr. Tom Salzer (phonetic spelling)?
15	Q Any certain location or anything like that?	15	A Tom Salzer, a Jackson man.
16	A Where I can breathe and do things better.	16	Q Okay.
17	Q Okay. Where can you breathe and do things better?	17	A Engineer. And I never worked with Tom neither.
18	What type of weather, I guess?	18	Q So you never made any runs with Tom?
19	A Where it is not like this (indicating), or humid in	19	A No.
20	like Florida, hot and humid. I went down to visit my	20	Q When is the last time you spoke with Tom?
21	daughter a couple of weeks ago, and it was 85 and	21	A Been years.
22	muggy. And it is like -- oh, it just tears me up, just	22	Q And Tom you believe lives in Jackson?

Transcript of Robert Newkirk
Conducted on February 8, 2017

23 (89 to 92)

89	91
1 A He worked out of Jackson. He was a Jackson man. I am 2 not sure where he lives.	1 Q Did you ever work -- when I say "together," I am not 2 meaning on the same run or anything like that.
3 Q All right. Mr. Bonny, Rudy Bonny?	3 A Okay. We worked the same pool, Toledo to Chicago pool.
4 A Jackson man.	4 Q Okay. And Dick Messenger?
5 Q What railroad were you working for whenever you worked 6 with Tom?	5 A Elkhart, Indiana, conductor, yard man.
7 A I never worked with Tom.	6 Q Okay. You guys would have been with Conrail; is that 7 correct?
8 Q Okay. Well --	8 A Yes.
9 A He used to -- Tom used to be an old crew dispatcher.	9 Q Okay.
10 Q Okay.	10 A And I did work with Dick before in the yard.
11 A That's where he come out in the engine service room, 12 and he was a crew dispatcher out of Jackson.	11 Q Okay. What would you and Dick have done together?
13 Q Were you guys both working for Conrail whenever you 14 worked at the same location?	12 A He was a conductor and I was an engineer.
15 A Yeah. He worked -- Yeah.	13 Q You never made any runs with Dick, just yard work?
16 Q How about NS?	14 A No. He was a yard man.
17 A No.	15 Q Okay. When is the last time you spoke with Dick?
18 Q What about Rudy, he is Jackson, you said?	16 A Probably a month ago. I keep -- Dick is a good friend 17 of mine.
19 A Yeah.	18 Q Okay. Dick lives in Mishawaka?
20 Q So you would have been working at -- with Conrail, 21 excuse me?	19 A Yes.
22 A Yes.	20 Q The only reason I know that is it is right by 21 Notre Dame.
	22 A However, he did just build a house in Crab Orchard,
90	92
1 Q And what did Rudy do again?	1 Tennessee.
2 A Engineer.	2 Q When is the last time you spoke with Rudy?
3 Q Did you ever make any runs with Rudy?	3 A It has been years.
4 A No.	4 Q Okay. Same deal with Tom, it has been years?
5 Q Tim Galloway?	5 A Yes.
6 A Tom.	6 Q Okay. Tom Salzer, that is.
7 Q Tim -- Tom?	7 A Right.
8 A It is Tom, excuse me. Toledo man, Toledo west man, 9 engineer. And no, I never worked with him.	8 Q Same with Tom Galloway, it has been years?
10 Q Okay. NS, or Conrail, or both?	9 A Yeah. The only one I have talked to recently is Dick 10 Messenger.
11 A I think he is an NYC man.	11 Q Okay. Okay. Do you recall the names of any of your 12 supervisors when you worked with NS?
12 Q But you never worked for New York Central?	13 A No.
13 A No. I might be wrong, but I think --	14 Q What about with Conrail?
14 Q Well, did he work -- whenever he is working out of 15 Toledo, were you guys working with NS together?	15 A Yeah.
16 A I didn't -- I never -- We were in the same pool --	16 Q Okay.
17 Q Yeah.	17 A Butch Hayden. Is that what you are asking me?
18 A -- if that's what you mean by work.	18 Q Yeah, any of the names of your supervisors that you 19 recall.
19 Q You were employed by NS?	20 A Rick Cavalier, Bar -- I can't think of his -- he was 21 out of Bryan, and that's about it.
20 A You're right.	22 Q Okay. Bar is his name?
21 Q Okay.	
22 A Yeah.	

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24 (93 to 96)

	93		95
1 A Bar.		1 A Yeah.	
2 Q B-A-R?		2 Q Okay. How often?	
3 A Yeah. He was a trainmaster in Bryan.		3 A Every few months, I think they – I am not really sure.	
4 Q Okay. Did you ever file any sort of formal complaint		4 Q Okay.	
5 with Butch about diesel fumes or being exposed to		5 A They would give you a trinket or whatever.	
6 diesel fumes?		6 Q For completing the class?	
7 A No.		7 A Or – Yeah, a meeting.	
8 Q Did you ever file a formal complaint with Mr. Cavalier		8 Q Okay. Do you recall any of the specifics of any of the	
9 regarding diesel fumes or anything like that?		9 meetings?	
10 A No. No.		10 A No, I don't.	
11 Q What about Mr. Bar, ever file a formal complaint with		11 Q How about did you have a safety manual or safety book	
12 him regarding diesel fumes?		12 whenever you worked for Conrail?	
13 A I don't believe so.		13 A Um-h'm. (Witness nodded head.)	
14 Q Okay. Whenever you worked with Conrail, did you ever		14 Q Did you have one with NS?	
15 have a respirator or mask or anything like that?		15 A I believe they did.	
16 A No.		16 Q Okay. Did you ever have any safety tests at Conrail,	
17 Q Did you ever see anyone else wearing any sort of		17 test you on your safety knowledge?	
18 respiratory protection or respirator when you ever		18 A I – Well, I had people ride with me before, if that's	
19 worked with Conrail?		19 what you mean.	
20 A I can't say I did.		20 Q Did you have like taking a test, like on a piece of	
21 Q Okay. Did you ever ask for one whenever you worked for		21 paper --	
22 Conrail?		22 A Oh.	
	94		96
1 A No.		1 Q -- with Conrail?	
2 Q Okay. Whenever you worked with NS, did you wear a		2 A Like the book of rules, I am not sure if they did it.	
3 respirator or mask or anything like that?		3 I don't remember, I don't recall.	
4 A (Witness shook head back and forth.)		4 Q What about with NS?	
5 Q Did you ever see anyone else wear one when you worked		5 A I don't recall.	
6 for NS?		6 Q You are obviously a member of a -- I don't know, what	
7 A No.		7 unions were you a member of?	
8 Q Did you ever ask for one when you worked at NS?		8 A BLE.	
9 A No.		9 Q Any other?	
10 Q Conrail, did you have safety meetings?		10 A Yeah. When I was a laborer, fireman and oilers.	
11 A I am sure we did. You know, I am not – I don't recall		11 Q Okay. Do you remember your local number with the BLE?	
12 them, but –		12 A My first one? I do, 2.	
13 Q Okay. Do you recall how often they were held, if they		13 Q Number 2?	
14 had them?		14 A Yep.	
15 A No.		15 Q All right.	
16 Q Okay. Do you recall the rule of the day?		16 A But then after that, I have changed, and this and that,	
17 A Yeah. I seem to think, when you sign in, there was		17 from going to different places. I don't remember	
18 something on the sign-in sheet about the rule of the		18 Toledo's. I don't remember Elkhart's, but I do	
19 day –		19 remember Division 2 where I hired out at –	
20 Q Okay.		20 Q Okay.	
21 A – if I remember correctly, but I could be wrong.		21 A – just because of the two.	
22 Q Okay. Did you have safety meetings with NS?		22 Q You know, I assume you don't remember your fireman and	

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25 (97 to 100)

	97		99
1	oilers local number?		
2	A No, I don't have a clue.	1	A Yeah.
3	Q Did you ever go to union meetings?	2	Q Okay.
4	A No. I mean, I have been to a couple of BLE meetings, but never a fireman and oilers meeting.	3	MR. PETRUCELLI: We should ask, are you doing all right, Patrick?
5		4	
6	Q Did you ever have any sort of leadership role with the BLE?	5	MR. HORVAT: I am hanging in there.
7		6	MR. PETRUCELLI: It kind of goes both ways.
8	A No.	7	Q (By Mr. Horvat) Did you ever have to go through any
9	Q Okay. Never local chairman or anything like that?	8	tunnels on any of your runs, that you recall?
10	A No.	9	A (By the Witness) No.
11	Q Okay. Did they send out union magazines or	10	Q Before you go out on the road, did you have to do an
12	publications, newspapers, or anything at the BLE?	11	inspection of the locomotive or the engine -- Let me
13	A Yeah, yeah.	12	start -- let me just stop and break it up a little bit.
14	Q Okay. Did they ever discuss diesel fumes or anything	13	Whenever you were with Conrail, before you take an
15	like that, that you recall?	14	engine out on the road, did you have to do an
16	A Not that I recall.	15	inspection of the engine?
17	Q Okay. Did you ever make any complaints regarding	16	A If the cab cards weren't signed, yes.
18	diesel fumes to your local chairman or anything like	17	Q What about with NS, did you have to do an inspection?
19	that?	18	A Check the cab cards. If the cab cards were out of
20	A Yeah.	19	date, yes.
21	Q Okay. Who was your local chairman?	20	Q Did you have to do an ME-60?
22	A Davie Fernald.	21	A Work report?
		22	Q Yeah.
		98	100
1	Q Could you spell Mr. Fernald's last name?	1	A Yeah.
2	A Good luck. Sorry.	2	Q Okay. Did you have to do that every time before you
3	Q That's okay.	3	took one out?
4	A I can't help you there. If I had my phone with me, I	4	A No. It was usually at the end of the trip if they were
5	could look it up, but I don't.	5	supplied, they were on the engines. Sometimes they
6	Q Okay. When is the last time you spoke with Davie?	6	didn't have them there.
7	A Well, it has been a while ago.	7	Q Okay. So there was a folder inside of the cab that
8	Q More than a few years?	8	would hold the ME-60 card; is that right?
9	A Probably -- No. I bet you it is six, seven months ago.	9	A If they were there, yeah.
10	Q Is he still working, Davie?	10	Q Okay. And what would go into an ME-60 inspection that
11	A No, he is retired.	11	you recall?
12	Q Okay. What did he do for the railroad?	12	A Well, if you were getting like a Toledo to Chicago
13	A Engineer.	13	train, it was right on the main line.
14	Q Okay. You complained about diesel fumes to Davie?	14	Q Okay. Did you ever have to perform an ME-60
15	A Yeah.	15	inspection, you yourself?
16	Q Did you fill out any form or anything like that?	16	A You mean a 24-hour inspection?
17	A No.	17	Q Yeah.
18	Q Just --	18	A Yeah.
19	A Just --	19	Q Okay.
20	-- talking?	20	A Yeah.
21	A Just bitched, just bitched.	21	Q How often would you have to do that?
22	All right. Are you doing all right, sir?	22	A Whenever the cab cards weren't out of date, and

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26 (101 to 104)

101	103
1 basically that would be at an outpost assignment like	1 bodies.
2 Bryan, or something like that.	2 Q Whenever you worked with NS, were they just the road
3 Q Okay.	3 engines that were air conditioned?
4 A Because at Bryan, I think they used to take -- if you	4 A Yes.
5 don't mind, they used to take their engines to Elkhart	5 Q Were there more air conditioned than non-air
6 like maybe once a week to get serviced, so after	6 conditioned, whenever you worked with NS, the road
7 24 hours, you had to make the inspection. Does that	7 engines?
8 make sense?	8 A Yeah. Yeah.
9 Q Yeah.	9 Q Okay.
10 A Okay.	10 A Except on the locals, they were all the junkers.
11 Q What goes into the inspection itself?	11 Q What?
12 A Brakes shoes, sanders, water, oil, stuff like the	12 A Most of the -- Now, most of the Toledo to Chicago pool
13 federal government requires to be done.	13 engines were good engines.
14 Q The FRA requires?	14 Q Okay.
15 A Yeah.	15 A The short pool -- the short pool, Toledo to Chicago,
16 Q Did you have to do ground inspection, engine room	16 like you would get junk coming out of Bellevue, Ohio,
17 inspection?	17 the NS yard, so it was fricking junk.
18 A Yeah.	18 Q Okay. What about Conrail, did they have air
19 Q Brake check, truck check?	19 conditioned engines on the road?
20 A Yeah.	20 A Some.
21 Q Springs, pins?	21 Q Did NS or Conrail have a dead heading policy?
22 A Wheels.	22 A I wasn't very familiar with NS's.
102	
1 Q Wheels, traction motors?	1 Q Okay.
2 A (Witness nodded head.)	2 A Conrail, they usually would dead head on Amtrak, but I
3 Q That's part of the ground inspection?	3 believe on NS, a lot of times you would stop and pick
4 A Yeah. It is kind of hard to see traction motors and	4 people up on your train, put them on your train, and
5 stuff.	5 bring them in to Toledo, or whatever.
6 Q As far as an engine room inspection, as part of that,	6 Q Would they take vans and stuff like that, as well, and
7 walkways, check the oil, water leaks, you know, air	7 trucks?
8 brakes, radios, things like that?	8 A Conrail would.
9 A (Witness nodded head.)	9 Q Okay.
10 Q Is that correct?	10 A And Amtrak -- Like I say, Conrail used to dead head a
11 A Correct. Hand brake, yeah.	11 lot of people on Mondays, down to Chicago.
12 Q Were any of the engines that you worked on air	12 Q Okay.
13 conditioned whenever you worked with Conrail?	13 A And I -- I never once got picked up on Conrail, on a
14 A Some of them. The newer ones they started getting in	14 dead train and brought in to somewhere --
15 toward the end, yes.	15 Q Okay.
16 Q What about with NS?	16 A -- like the NS did.
17 A Yes.	17 Q Okay.
18 Q Were they all --	18 A You know, that never happened.
19 A The road units.	19 Q Okay.
20 Q The road units were air conditioned?	20 A That's all I can say. I don't know what NS dead
21 A They were starting to come out with the -- I don't know	21 heading policy was.
22 what they -- dash nines, or I guess that style of	22 Q Okay. Did NS or Conrail have any shutdown or idling

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27 (105 to 108)

	105		107
1	programs or policies?	1	twice a day?
2	A What now?	2	A Yes.
3	Q Shutdown or idling programs of the engines, that you	3	Q What's your prednisone for?
4	know of?	4	A For my condition.
5	A Well, they got them engines now when you — when they	5	Q Is that the COPD?
6	are in idle, they shut down automatically. Is that	6	A Yeah. Diesel asthma, whatever.
7	what you are talking about? I didn't —	7	Q Okay. Who prescribes the prednisone for you?
8	Q Was that in service whenever you were there?	8	A They are all prescribed by Dr. Knitter.
9	A They just started coming out with them things.	9	Q All of these drugs listed on this piece of paper are
10	Q Okay.	10	prescribed by Dr. Knitter?
11	A When you would put them in forward, they would start,	11	A Correct.
12	yeah.	12	THE REPORTER: Can you spell his name,
13	Q Okay.	13	please?
14	A I didn't work with many of them.	14	MR. PETRUCELLI: Is it K-N-I-T-T-E-R?
15	Q Okay.	15	THE WITNESS: Yeah.
16	A But I have seen them.	16	MR. HORVAT: Correct.
17	Q How about electric locomotives, and yard serviced?	17	Q (By Mr. Horvat) And Singulair?
18	A I never had electric units.	18	A (By the Witness) I do take the generic for that.
19	Q Okay.	19	Q That's okay.
20	A And they would be out east.	20	A But it is that long (indicating).
21	Q All right.	21	Q That's perfectly fine. And you take that once a day?
22	MR. HORVAT: Let's take five minutes, real	22	A Um-h'm. (Witness nodded head.)
	106		108
1	quick, if that's all right.	1	Q That's also for your COPD?
2	(Discussion off the record.)	2	A Yeah.
3	Q (By Mr. Horvat) What -- Are you on any medications	3	Q And Stiolto Respimat?
4	right now?	4	A Yes.
5	A (Witness hands Mr. Horvat a document.)	5	Q Is that an inhaler?
6	Q All right. We will probably just make this an exhibit.	6	A Yes, two puffs once a day.
7	A I couldn't pronounce them, so I wrote them.	7	Q Do you take that in the morning, or at any point in
8	Q Very good.	8	time during the day, or when do you take that?
9	MR. PETRUCELLI: You could make it an	9	A I try to wait until the afternoon, except today I did
10	exhibit.	10	it before I came in here.
11	MR. HORVAT: Yeah, I am going to make an	11	Q Okay. Of course, there is a hard one, ipratropium
12	exhibit, but I want to ask him a couple of questions.	12	bromide?
13	I will mark this as Exhibit A.	13	A Yeah. That is a solution --
14	(Exhibit A marked for identification.)	14	Q Okay.
15	Q (By Mr. Horvat) Okay. Mr. Newkirk has handed me a	15	A -- for the nebulizer machine.
16	handwritten note. I assume it is your handwriting,	16	Q Okay. How often do you use the nebulizer?
17	sir?	17	A Whenever I am not feeling well. I use it more -- like
18	A (By the Witness) Yes.	18	when I got up here, I started using it again. I take
19	Q With the list of his medications you are currently on;	19	it with me wherever I go.
20	is that correct?	20	Q Do you use it as-needed, is that fair to say?
21	A Yes.	21	A Yes, up to four times a day.
22	Q Prednisone five milligrams, it says 2X, I assume that's	22	Q Okay. But the prednisone you take every day,

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28 (109 to 112)

	109		111
1	regardless?	1	A Other than, you know, checkups and physicals and things
2	A Yes.	2	like that.
3	Q And the Singulair, same deal, take it every day?	3	Q Okay. You may not know this answer, how long have you
4	A Yes. The other one, too, the Respimat. The other ones	4	been on prednisone?
5	as-needed.	5	A A few years.
6	Q Okay.	6	Q Okay.
7	A And the Albuterol is a rescue inhaler, as-needed.	7	A Same with all of them.
8	Q Okay. So the bromide and the nebulizer you use	8	Q When you say "a few years," is that more than three?
9	as-needed; is that correct?	9	A Well, yeah, quite a few years.
10	A Yes. Yes.	10	Q Okay.
11	Q And along with the Albuterol inhaler, you use that	11	A How is that?
12	as-needed, as well?	12	Q More than five?
13	A Right.	13	A No.
14	Q Okay. Do you take anything else?	14	Q More than three, though?
15	A No.	15	A Some of them maybe.
16	Q Okay. You said all of these are prescribed by	16	Q Okay. Unfortunately, I have to ask you which ones. Do
17	Dr. Knitter?	17	you know if you have been on prednisone for more than
18	A Correct.	18	three years?
19	Q Okay. And he is your pulmonologist?	19	A No, I don't.
20	A Yes, sir.	20	Q Do you know if you have been on --
21	Q Okay. And your family doctor is Dr. Weeks?	21	A Excuse me.
22	A Yes.	22	Q Go ahead. No, no.
	110		112
1	Q How long have you been treating with Dr. Weeks?	1	A I am going to help you out.
2	A Since I moved up to Grayling, 2011.	2	Q Short circuit?
3	Q Okay. He is at Grayling Family Practice?	3	A Yeah. The nebulizer, I have been on longer than three
4	A Correct.	4	years.
5	Q We will talk about your current condition, your COPD,	5	Q Okay.
6	in a moment. But what types of things has Dr. Weeks	6	A That's the only one I am sure of and the rescue
7	treated you for, other than your COPD?	7	inhaler.
8	A Shoulder.	8	Q The Albuterol?
9	Q Okay.	9	A Yeah.
10	A That's -- When I first started seeing him, I had a	10	Q These are both for your COPD; is that correct?
11	cough.	11	A (Witness nodded head.)
12	Q Okay.	12	MR. PETRUCELLI: You have to answer.
13	A And --	13	Q (By Mr. Horvat) Yes?
14	Q That's in 2011?	14	A (By the Witness) Yes. I'm sorry.
15	A Yeah. Actually, the first few times I seen him it was	15	Q I apologize. Caught me before -- I appreciate that.
16	because of a cough, and he diagnosed it as acute	16	Who was your family doctor before Dr. Weeks, if you had
17	bronchitis.	17	one?
18	Q Okay. Anything else, other than the cough and the COPD	18	A I don't remember.
19	and the shoulder, that Dr. Weeks has treated you for,	19	Q Okay. Did you have one?
20	that you can recall?	20	A Yes.
21	A No.	21	Q Okay. Do you know where he or she was located?
22	Q Okay.	22	A Grand Rapids.

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29 (113 to 116)

<p>113</p> <p>1 Q Okay.</p> <p>2 A Or--</p> <p>3 Q Dr. Lewis?</p> <p>4 A Yeah.</p> <p>5 Q That was him?</p> <p>6 A Yeah. That was my family doctor, yeah, for a long, long time, long time.</p> <p>7 Q All right. What types of things did Dr. Lewis treat you for?</p> <p>8 A Everything, everything.</p> <p>9 Q Anything specifically that you recall him treating you for, other than, you know--</p> <p>10 A Just--</p> <p>11 Q -- common colds--</p> <p>12 Q -- basic kid stuff.</p> <p>13 Q -- the flu, you know?</p> <p>14 A Yeah.</p> <p>15 Q Antibiotics, things like that; is that correct?</p> <p>16 A Yeah, stitches.</p> <p>17 Q Dr. Richard Bereza -- Bereza, what type of doctor is he?</p> <p>18 A A surgeon for knees.</p>	<p>115</p> <p>1 A I don't know his official title, but it was for my neck.</p> <p>2 Q Okay. He -- Dr. Neuman never treated you for your COPD; is that correct?</p> <p>3 A No. No.</p> <p>4 Q That is correct?</p> <p>5 A That is correct, he never has.</p> <p>6 Q Okay. Did Dr. Lewis ever treat you for your COPD?</p> <p>7 A No.</p> <p>8 Q Okay. Have you ever had to stay overnight in a hospital for your COPD?</p> <p>9 Q No.</p> <p>10 Q Okay. Have you ever had to stay overnight in a hospital for your COPD?</p> <p>11 A No.</p> <p>12 Q Have you ever -- other than I assume you spent time in the hospital for the explosion; is that correct?</p> <p>13 A Yeah, when -- yeah.</p> <p>14 Q And probably for your surgery for your knee?</p> <p>15 A Yeah.</p> <p>16 Q Okay. Any other times that you had had any overnight hospital stays, that you recall?</p> <p>17 A When they did my shoulder, when Ohagan did my shoulder, it was outpatient. I had hernia surgery, tonsils, knee replacement. So that's about it.</p>
<p>114</p> <p>1 Q Okay. Did he work on your meniscus?</p> <p>2 A Yeah.</p> <p>3 Q Okay. Is that the only thing he did for you pretty much?</p> <p>4 A I believe so, correct.</p> <p>5 Q Dr. Thomas Ohagan?</p> <p>6 A Shoulder.</p> <p>7 Q He is an orthopaedic doctor?</p> <p>8 A Yes.</p> <p>9 Q Other than your shoulder, did Dr. Ohagan treat you for anything else?</p> <p>10 A No, sir.</p> <p>11 Q Dr. Ohagan never treated you for your COPD?</p> <p>12 A No, sir.</p> <p>13 Q Dr. Bereza never treated you for your COPD; is that correct?</p> <p>14 A (Witness shook head back and forth.)</p> <p>15 Q Is that correct?</p> <p>16 A Correct. I'm sorry, correct.</p> <p>17 Q That's all right. Dr. Neuman?</p> <p>18 A Correct.</p> <p>19 Q What type of doctor is Dr. Neuman?</p>	<p>116</p> <p>1 Q Okay. Dr. McClellan?</p> <p>2 A Yes.</p> <p>3 Q He is an allergy doctor, ENT?</p> <p>4 A Allergy doctor.</p> <p>5 Q Okay. What types of things has Dr. McClellan treated you for?</p> <p>6 Q PFT?</p> <p>7 A I can't think of what you would call it, say if you were allergic to things, and he did a breathing thing on me.</p> <p>8 Q Okay. Did he ever give you a nebulizer, Dr. McClellan?</p> <p>9 A Yes.</p> <p>10 Q When did you first start seeing Dr. McClellan, if you know?</p> <p>11 A I seen him two times, and the best of my recollection, it was April of 2013.</p> <p>12 Q Okay. Those are the only two times you saw him that you recall?</p> <p>13 A Yes, sir.</p> <p>14 Q Do you have any plans to go back to see Dr. McClellan at this time?</p>

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30 (117 to 120)

	117		119
1 A No, none.		1 treated with at the Reynolds Clinic?	
2 Q Okay. Now, whenever you saw him in 2013, was he		2 A (By the Witness) No, I don't.	
3 treating you for your COPD, or was it for allergies, if		3 Q Okay. But you don't recall being diagnosed with COPD	
4 you know?		4 in 2009?	
5 A That's when I was taking down the fireplace, and I		5 A No, I don't.	
6 thought there must – there might have been something		6 Q Okay. Did Dr. Weeks ever diagnose you with COPD?	
7 in the air, because I – shortness of breath and stuff		7 A Yes.	
8 like that. So I went to see him, he checked me for		8 Q Okay.	
9 allergies; allergic to dust mites. That's where taking		9 A I don't remember the year or the date --	
10 out the carpet come in at.		10 Q Okay, that's fine.	
11 Q Okay.		11 A -- neither.	
12 A And that's that.		12 Q That's fine. Tell me -- Explain to me how you came to	
13 Q Okay. He was trying to see if you had some sort of		13 get the diagnosis of COPD, from what you recall,	
14 allergy, or something like that?		14 Dr. Weeks?	
15 A Right.		15 A Well, I had a cough --	
16 Q Okay.		16 Q Okay.	
17 A Yeah. I thought there might be something in the air.		17 A -- and shortness of breath --	
18 Q Okay. When did you first start having shortness of		18 Q Okay.	
19 breath or breathing issues, I guess?		19 A -- like I have never had before, and that's how.	
20 A I believe it was – like I first complained to		20 Q Okay. Now, when you say like you have never had it	
21 Dr. Weeks about it, and I don't know if it was in the		21 before, had you had shortness of breath prior to that	
22 second – the first, second, or third time I seen him,		22 instance?	
	118		120
1 when he diagnosed me with acute bronchitis.		1 A Not that I recall.	
2 Q Okay.		2 Q Okay. The first time you recall having shortness of	
3 A And it was either 2011 or 2013. I really can't get the		3 breath was --	
4 grip on the exact date.		4 A Right.	
5 Q Okay. Could you possibly have been diagnosed or told		5 Q -- whenever you saw Dr. Weeks, in whatever, 2011 or	
6 you had COPD as far back as 2009?		6 2013; correct?	
7 A No.		7 A Right, correct.	
8 Q Okay. If I show you a medical record that says COPD,		8 Q Okay. The first time you saw him -- I will show you	
9 would that help refresh your recollection?		9 this. I will mark this as C. It is a record from	
10 A Yeah. ^		10 Dr. Weeks', from his Grayling practice.	
11 Q Okay. I will give you a copy. We will mark it as B.		11 (Exhibit C marked for identification.)	
12 (Exhibit B marked for identification.)		12 Q (By Mr. Horvat) Does that sound about right, October	
13 Q (By Mr. Horvat) Do you recall being treated at the		13 of 2011?	
14 Reynolds Clinic?		14 A (By the Witness) Yeah.	
15 A (By the Witness) Yes, I do -- I do -- went there.		15 Q Okay.	
16 That was after the explosion.		16 A That sounds about right.	
17 Q Okay.		17 Q That's when you started having your shortness of breath	
18 A I believe.		18 and your coughing?	
19 MR. PETRUCELLI: Can you just --		19 MR. PETRUCELLI: Wait a minute, that's not	
20 parenthetically, where is that at?		20 what it says in the record, and that's not what he	
21 THE WITNESS: Toledo, Ohio.		21 says.	
22 Q (By Mr. Horvat) Do you recall who you would have		22 MR. HORVAT: Okay.	

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31 (121 to 124)

		121		123
1	MR. PETRUCELLI: The record speaks for		1 A After McLaren (sic), the guy with the -- that did the	
2	itself.		2 testing for --	
3	MR. HORVAT: Okay. The record says the		3 Q Oh, okay --	
4	patient has been coughing for two weeks. Is that --		4 A -- to see if I was allergic to something.	
5	MR. PETRUCELLI: That's what it says. If		5 Q -- the allergies.	
6	that's what it says, that's what it says. I don't see		6 A I talked to a lady, and she said, Bob, you ought to go	
7	shortness of breath in there, so there is no		7 see a pulmonary specialist.	
8	foundation, at least in that record, to say that, and		8 Q Okay.	
9	he hasn't made a foundation on that.		9 A That's how I got in to Dr. Knitter.	
10	MR. HORVAT: Okay.		10 Q Okay. And the first time you would have saw him is	
11	Q (By Mr. Horvat) Do you know what dyspnea with		11 what, 2013?	
12	ambulation means?		12 A '13, yes.	
13	A (By the Witness) No, I don't.		13 MR. PETRUCELLI: Who, Knitter?	
14	Q Would you have told him that you had been coughing for		14 MR. HORVAT: Dr. Knitter, yeah.	
15	two weeks, Dr. Weeks?		15 MR. PETRUCELLI: June of 2013, if you want to	
16	A Would I have -- What do you mean?		16 be precise.	
17	Q You went to see Dr. Weeks in 2011; right?		17 MR. HORVAT: Okay.	
18	A Right.		18 Q (By Mr. Horvat) Dr. McClellan referred you to	
19	Q Okay.		19 Dr. Knitter?	
20	A Yeah.		20 A (By the Witness) No.	
21	Q You went to -- because you had a cough; is that		21 Q Okay. Oh, someone -- Excuse me, forgive me, strike	
22	correct?		22 that.	
		122		124
1	A Yeah. It wasn't -- Yeah.		1 A I was talking to a lady that worked in the health	
2	Q Okay. And you also told him, sometime in 2011, you		2 field, and she said, Bob, you ought to go talk to a	
3	were having shortness of breath; is that correct?		3 pulmonary specialist.	
4	A Right.		4 Q Okay.	
5	Q Okay. And you went to see him because something was		5 A So I got on the computer, and I looked up pulmonary	
6	wrong with you, you thought?		6 specialists in northern Michigan.	
7	A Right.		7 Q Okay. And that's how you got --	
8	Q Is that correct?		8 A Yeah. I seen where he was from, I seen where he went	
9	A Right.		9 to school at and where he practices stuff at, and	
10	Q Okay. Did he prescribe anything -- anything to you at		10 that's how I picked him to go see him.	
11	that time?		11 Q Okay. What was that woman's name that you talked to?	
12	A I don't recall.		12 A Boy, I can't even -- I can't even remember.	
13	Q Okay.		13 Q Okay.	
14	A He very well might have.		14 A It was just somebody that I ran into at a gas station,	
15	Q Okay. Did he diagnose you with COPD in 2011,		15 that had a medical uniform on, that I said, hey, will	
16	Dr. Weeks, if you recall?		16 you look at this.	
17	A No.		17 Q What did you show her?	
18	Q How long before -- I assume Dr. Weeks referred you to		18 A The pulmonary test thing.	
19	Dr. Knitter; right?		19 Q Okay. Is that the one you had at Dr. McClellan's	
20	A No.		20 office?	
21	Q Okay. How did you come about to treat with		21 A Yes.	
22	Dr. Knitter?		22 MR. PETRUCELLI: You mean Dr. McLean,	

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32 (125 to 128)

	125		127
1	Dr. McLean, is it not?	1	A Correct.
2	MR. HORVAT: I have McClellan here, at	2	Q -- you saw the woman at the gas station?
3	Bayside Allergy.	3	A Right.
4	MR. PETRUCELLI: Bayside Allergy?	4	Q Okay. And you showed her this report?
5	MR. HORVAT: Yeah.	5	A Right.
6	THE WITNESS: Yeah, that thing.	6	Q Okay. And then she said you should go see a pulmonary
7	MR. HORVAT: So it would have been -- I will	7	doctor?
8	show it to Mr. Petrucci.	8	A Right.
9	MR. PETRUCELLI: That's all right.	9	Q Okay. Did Dr. McClellan ever tell you the results of
10	MR. HORVAT: Okay. We will mark this as D.	10	this spirometry report that was conducted in April of
11	(Exhibit D marked for identification.)	11	2013, April 14 of 2013?
12	MR. PETRUCELLI: These aren't -- I don't know	12	A I had this with me.
13	what these records are being used for because he didn't	13	Q Did he ever explain it to you, that you recall?
14	create them. If you are trying to refresh his	14	A Not -- What he said was I was having asthma attacks.
15	recollection, I am not sure that's appropriate, a, and,	15	Q Okay.
16	b, he didn't write any of these records, but go ahead	16	A And I was like, I have never had asthma. That's
17	and use them for whatever you want, but I may impose an	17	what -- that's what I told this lady with this, too, is
18	objection.	18	like I played football in school, I have done this, I
19	MR. HORVAT: That's fine, that's fine. Okay.	19	have never had an asthma attack.
20	So --	20	Q Okay. Did he say anything about lung obstruction or --
21	THE WITNESS: When I seen this --	21	A Not that I can recall.
22	MR. PETRUCELLI: Wait a minute. Let him ask	22	Q Okay, that's fine.
	126		128
1	the question.	1	A But, no, I had this thing with me.
2	THE WITNESS: Okay.	2	Q Okay, that's fine. So then you go to see Dr. -- After
3	Q (By Mr. Horvat) All right. So when you went to	3	you speak with that woman in the gas station, you look
4	Dr. McClellan because you were having the shortness of	4	up Dr. Knitter?
5	breath and the --	5	A I make an appointment to see a pulmonary specialist
6	A (By the Witness) Right.	6	because I am freaking out. I was like, asthma attacks.
7	Q -- issues, he did a spirometry on you; is that correct?	7	That's what this -- it is asthma attacks.
8	A Correct. Yeah. I don't know what it is called.	8	Q Okay. How often -- Before you are seeing Dr. Knitter,
9	Q At the Bayside Allergy --	9	how often are you having these attacks that you have
10	MR. PETRUCELLI: Let him finish his question.	10	described as asthma attacks?
11	Q (By Mr. Horvat) I will help you along here. So he	11	MR. PETRUCELLI: I don't think he called them
12	performed a spirometry at Bayside Allergy; right?	12	asthma attacks.
13	A (By the Witness) Yeah.	13	THE WITNESS: No, the doctor --
14	Q And that's when you found out you were having breathing	14	MR. PETRUCELLI: Dr. McClellan did.
15	issues; is that correct?	15	THE WITNESS: And he gave me the medicine to
16	A Correct.	16	take, and that helped.
17	Q And then after you had this test done --	17	Q (By Mr. Horvat) Okay. Do you recall what medicine he
18	A Right.	18	gave you?
19	Q -- which I have marked as Exhibit D, this spirometry	19	A (By the Witness) The nebulizer medicine.
20	report --	20	Q Okay.
21	A Correct.	21	A And I believe he gave me a rescue inhaler, too, but I
22	-- that's dated April 14th, 2013 --	22	could be wrong.

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33 (129 to 132)

	129		131
1 Q	That's fine. After Dr. McClellan gives you the	1 of breath, is that correct, you told Dr. Weeks back at	
2 nebulizer, how often are you using the nebulizer, do	2 that time?		
3 you recall?	3 A Yes.		
4 A Three times a day, I believe.	4 Q In 2011?		
5 Q Okay. So you are using it three times a day?	5 A I believe so, in 2013.		
6 A Yeah.	6 Q Okay, okay. Are you -- I didn't know if you had --		
7 Q Okay. Then you go see Dr. Knitter?	7 MR. PETRUCELLI: I am just reading it.		
8 A Right.	8 Q (By Mr. Horvat) Okay. Did you also tell him you		
9 Q Okay. And what do you describe to Dr. Knitter the	9 worked at the railroad?		
10 first time you see him?	10 A Who, Dr. Weeks?		
11 A Well --	11 Q Yes.		
12 Q If you recall.	12 A Yes, yes.		
13 A I showed him this stuff.	13 Q Did you talk to him anything about being exposed to		
14 Q Okay.	14 diesel fumes?		
15 A And I don't, you know --	15 A I might have. I don't know.		
16 Q That's -- that's fine. If you don't recall, that's	16 Q Okay, that's fine. What about Dr. McClellan, whenever		
17 perfectly fine. You showed -- Did you show him the	17 you saw Dr. McClellan, did --		
18 spirometry report from Dr. McClellan?	18 A I told him I worked on the railroad, too.		
19 A I believe so. He ordered his own, I believe. I don't	19 Q Did you ever mention anything about diesel?		
20 know on what date that was.	20 A Might have. I don't think so.		
21 Q Okay, that's fine. And does Dr. Knitter diagnose you	21 Q Okay, that's fine. And what about Dr. Knitter, have		
22 with COPD?	22 you told him about working at the railroad?		
	130		132
1 A Yes.	1 A Yes.		
2 Q Okay.	2 Q Have you told him about diesel fumes, about possibly		
3 A Yes, he did.	3 being exposed to diesel fumes?		
4 Q And you see Dr. Knitter what, every six months, is that	4 A Actually, I believe he said something about it.		
5 about right?	5 Q Okay. What did he say to you?		
6 A Now, yeah. At first it was not -- it was sooner, more	6 A It could be caused by diesel exhaust, asthma. Your		
7 frequent. Yes.	7 asthma attacks could be caused by diesel exhaust.		
8 Q Okay. Do you recall -- The first time you saw	8 MR. PETRUCELLI: This is Dr. Knitter?		
9 Dr. Knitter, do you recall what tests he performed on	9 THE WITNESS: Yes.		
10 you?	10 MR. HORVAT: Dr. Knitter.		
11 A No, I don't.	11 Q (By Mr. Horvat) Do you currently smoke cigarettes?		
12 Q Is Dr. Knitter the only doctor you have treated for at	12 A (By the Witness) No.		
13 that practice, is he the only doctor you see there?	13 Q Did you smoke cigarettes at one point in time?		
14 A Once I seen a Lindsay Potts.	14 A Yes.		
15 Q Okay.	15 Q When did you start smoking cigarettes?		
16 A I believe her name was Lindsay Potts, that works in his	16 A I am not sure on the date, but in 30 years, probably		
17 office, too.	17 17, 18 of them I smoked.		
18 Q Is she a doctor or nurse practitioner?	18 Q Okay.		
19 A I believe -- I am not sure. She might be a nurse	19 A On and off.		
20 practitioner, very well could be.	20 Q All right. When did you start smoking cigarettes?		
21 Q Did you tell -- whenever you were having the coughing	21 A I was probably 23.		
22 with Dr. Weeks, and you told him you had your shortness	22 Q Okay. What type of cigarettes were you smoking at age		

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34 (133 to 136)

	133		135
1	23?	1	Q The red pack?
2	A Camels, Camel Lights, Camels.	2	A Yes.
3	Q Filtered or unfiltered?	3	Q Okay. Filtered?
4	A Filtered.	4	A Yes.
5	Q Okay. How much were you smoking a day, when you were	5	Q Okay. The Kools?
6	age 23?	6	A I wasn't into non-filters.
7	A Probably less than a pack.	7	Q All right, that's fine.
8	Q Okay. I assume by what you said, you quit for a period	8	A The Milds, Kool Milds.
9	of time?	9	Q And the Winstons, you don't recall what type of
10	A Um-h'm.	10	Winstons you smoked?
11	Q When was the first time you quit?	11	A Short - I mean the kings.
12	A I have no idea.	12	Q Okay. Would you kind of -- Did you have a brand you
13	Q Okay.	13	consistently smoked, or whatever was on sale, or --
14	A I really -- I wouldn't know.	14	A Whatever.
15	Q Okay. Had you been smoking for more than, you know, a	15	Q Okay. Do you recall when you stopped smoking for good,
16	year, two years?	16	I guess, do you know when that was, what year?
17	A I don't know.	17	A No.
18	Q Okay.	18	Q After you were diagnosed with COPD by Dr. Knitter were
19	A I really can't -- I can't give you an answer on that.	19	you still smoking?
20	It would all be guesses.	20	A At first, yes, and that was a struggle.
21	Q Okay. Do you know what decade that was?	21	Q Did you go on any non-smoking -- I -- like Chantix
22	A It would be the '80s --	22	or --
	134		136
1	Q Okay.	1	A No, I tried that before, but I believe that was with
2	A -- or late '70s.	2	Dr. Weeks. It was just too expensive.
3	Q Okay. How long did you quit for during that first	3	Q The non-smoking drugs or anti-smoking drugs?
4	time?	4	A Yeah, with what I had going on.
5	A Maybe a year, maybe two, but that's a guess.	5	Q Were you aware of the warning labels on cigarettes?
6	Q I don't want you to guess.	6	A Um-h'm.
7	A I am not sure.	7	Q You have to say --
8	Q Okay, that's fine. When is the next time you quit or	8	A Yes.
9	stopped smoking?	9	Q Did Dr. Weeks ever indicate that your COPD may be
10	A I can't answer none of that. The last time I did was a	10	related to your smoking, to you?
11	few years back. I really -- you know, I don't even	11	A He told me to quit.
12	know the date on that.	12	Q Okay. Did he ever relate that your COPD may have been
13	Q Okay. Were Camels the only brand of cigarettes you	13	caused by your smoking?
14	smoked?	14	A Yeah, could very well, yeah.
15	A No.	15	Q He did say that to you?
16	Q What other cigarettes did you smoke?	16	A I believe so, but I am not sure.
17	A I smoked Marlboros, Kools, that's --	17	Q That's -- You know, that's fine. This is what you can
18	Q Winstons, did you smoke Winstons?	18	remember, okay.
19	A Yes. That's back -- yes.	19	A But I believe he diagnosed me as acute bronchitis.
20	Q Marlboros, what type of Marlboros I guess did you	20	Q Okay.
21	smoke?	21	A That's -- When I first started seeing him, that's what
22	A Regular Marlboros.	22	it was diagnosed as. That's one of the reasons why I

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35 (137 to 140)

	137		139
1 went to the other two guys.		1 A Yeah. Wading -- Wading ain't happening.	
2 Q Okay.		2 Q Okay.	
3 A Because that's what he -- and I -- you know, I don't		3 A I mean, if it does, it ain't very long, and it is	
4 know.		4 tiring.	
5 Q Okay. Have you seen Dr. Weeks since you have been		5 Q Yeah.	
6 diagnosed with COPD?		6 A Imagine that, something that relaxing.	
7 A Um-h'm. Yeah.		7 Q Did you go on a fishing trip in 2015 to Colorado?	
8 Q Are you aware that maybe he has told you that your COPD		8 A Did I go on a fishing trip?	
9 may be related to smoking after you have been		9 Q Yeah.	
10 diagnosed?		10 A I went out west, I took my fishing poles, but did I	
11 A Yes.		11 fish? No.	
12 Q Okay. Dr. Knitter, your pulmonologist, has he in any		12 Q No.	
13 way related or expressed to you that your smoking may		13 A But it sure was pretty.	
14 have caused or contributed to your COPD?		14 Q You didn't fish out there?	
15 A Yes.		15 A No.	
16 Q Has he ever advised you to quit smoking, Dr. Knitter?		16 Q Is there a reason why you didn't fish?	
17 A Everybody, yeah.		17 A I did one day.	
18 Q Do you recall the last time you had a cigarette?		18 Q Okay.	
19 A No.		19 A Excuse me.	
20 Q Do you drink alcohol, sir?		20 Q That's fine.	
21 A No.		21 A I just remembered. I fished the South Platte River --	
22 Q Okay. Did you?		22 Q Okay.	
	138		140
1 A Yes.		1 A — in Colorado, one day.	
2 Q Okay. What did you -- What was your drink of choice?		2 Q Sure. Is there a reason you only fished one day?	
3 A Beer.		3 A Yeah.	
4 Q When did you stop drinking?		4 Q Is it because of your COPD?	
5 A February of 2003.		5 A Yeah.	
6 Q Okay. Did you ever go to rehab or alcohol --		6 Q Did you go out on that trip with anybody?	
7 A Yes, I did.		7 A Yes.	
8 Q -- counseling? Okay. Do you have any hobbies?		8 Q Who did you go with?	
9 A I like to fish.		9 A I can't think of the name of — the guide's name. It	
10 Q You like to fish?	^	10 was a guide.	
11 A I like to fish, yeah.		11 Q Okay. Did you drive out by yourself?	
12 Q Can you still fish?		12 A I flew out there that time.	
13 A Not — not really.		13 Q Okay. By yourself?	
14 Q Okay.		14 A Yes.	
15 A Not the way I like to, no.		15 Q Okay.	
16 Q What type of fishing do you do?		16 A When I came back, I drove out there with my dog, and I	
17 A I like to fly fish.		17 took my fishing stuff, but I never went fishing.	
18 Q Okay.		18 Q Okay. So you were out there twice?	
19 A To wade.		19 A Yes.	
20 Q Can you still fly fish?		20 Q When was the first time you were out there, do you	
21 A From a boat.		21 recall?	
22 Q Okay.		22 A No.	

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36 (141 to 144)

1 Q Okay. The second time would have been 2015, the one 2 you referenced? 3 A Yes. It was like within two weeks of each other or so. 4 Q Okay, okay. 5 A So that's, you know-- 6 MR. HORVAT: I believe I am almost done if 7 you have questions for-- 8 MR. PETRUCELLI: Yeah, I have a few 9 follow-up. 10 MR. HORVAT: Go ahead. 11 EXAMINATION 12 BY MR. PETRUCELLI: 13 Q Mr. Newkirk, I would like to talk to you a little bit 14 about your medical history that commences after you 15 moved to Grayling, Michigan, in 2011. Okay? 16 A Okay. 17 Q You established a relationship with Family Practitioner 18 Weeks-- 19 A Correct. 20 Q -- is that correct? 21 A Correct. 22 Q My records from Dr. Weeks show that you saw him on five	141	1 Okay? 2 A Okay. 3 Q He says in the first -- And, of course, you didn't 4 prepare this; correct? 5 A Correct. 6 Q These aren't your notes? 7 A No. 8 Q These are Dr. Weeks' notes? 9 A Correct. 10 Q But he says in this record -- And I am not asking you 11 to verify what he says, but he said 'here to get 12 established as a new patient, he has a cough times two 13 weeks. He has had surgery on left 2008, neck surgery 14 1995, bilat hernia surgery, tonsils.' That's 15 complaining -- that's CC, which means complaining 16 complaints, I think, or presentation of complaints, or 17 it is the complaint section of his -- his chart. 18 Number one, do you remember that you were establishing 19 your -- a new patient relationship with him on or about 20 10-18-2011? 21 A Correct. 22 Q Does that sound correct?	143
1 occasions between 10-18-2011 and 5-15-2013. That's 2 what my records show. 3 My first question to you is, did you have any 4 other family practitioner in the Grayling, Michigan, 5 area between 10-18-2011 and 5-15-2013? 6 A No. 7 Q Did you see any other doctors between 10-18-2011 and 8 5-15-2013, other than Dr. Weeks, Dr. McClellan, and 9 Dr. Mast, who is a cardiologist? 10 A I had stitches in the emergency room in Grayling. I 11 don't remember the doctors, but I cut my forehead, and 12 he stitched me up in the emergency room. 13 Q You saw Dr. Weeks -- So the answer to that is the only 14 person that you would have seen -- the only medical 15 practitioner would have been an emergency medicine 16 doctor who stitched your head? 17 A Correct. 18 Q Correct? 19 A Correct. 20 Q So Exhibit C that was marked by counsel is a medical 21 record that was created by Dr. Weeks, Eric Weeks, 22 arising out of an exam visit that's dated 10-18-2011.	142	1 A Correct. 2 Q And he writes in this that you said you complained of a 3 cough times two weeks. Do you recall that as being 4 approximately -- or that being true? 5 A Could be. 6 Q I mean, is it or isn't it? 7 A I believe so. I am -- I am not sure. 8 Q So two weeks, you had a cough for two weeks, that is 9 what he writes? 10 A Oh. 11 Q You don't dispute that? 12 A No. 13 Q On the back of his page, page three of three of 14 Exhibit C, he writes down, diagnosis, quote, acute 15 bronchitis. Did he tell you that was what was wrong 16 with you? 17 A That's what I thought, yeah. 18 Q Okay. That's just what I -- I was trying to get -- 19 flesh this out here. 20 A Yes. That's what he told me I had was acute 21 bronchitis. 22 Q Do you know what the word "acute" means?	144

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37 (145 to 148)

	145		147
1 A Not really. It is –		1 Q He has got his records. You don't have any independent	
2 Q Acute, do you understand the ordinary meaning of the		2 records?	
3 word "acute"?		3 A No.	
4 A Yes.		4 Q What he has written down in his records are his	
5 Q Meaning it just comes on?		5 records; correct?	
6 A Right.		6 A Right.	
7 Q So you had had a conversation with Dr. Weeks about what		7 Q Do you remember him telling you acute bronchitis again?	
8 was wrong with you when you went to see him for this		8 A Yeah. That's what he had me for, for a while.	
9 cough for two weeks; correct?		9 Q Okay. So then the fourth visit that I have, that from	
10 A Correct.		10 his records is 3-19-13 -- March 19th, 2013, that's the	
11 Q And you remember him telling you -- you don't dispute		11 fourth visit you have had with him over a period of	
12 he says, acute bronchitis?		12 about 18 months, from 10-18-2011 through 3-19-2013, and	
13 A Right.		13 this time, you talk about the shortness of breath to	
14 Q You come back to see him for a second visit, according		14 him; correct?	
15 to his records, on 6-5-2012. Is that consistent with		15 A (Witness nodded head.)	
16 your memory?		16 Q True?	
17 A Yes.		17 A Yes.	
18 Q Do you remember seeing him any time between 10-18-2011		18 Q And he is a general practitioner; correct?	
19 and 6-5-2012?		19 A Right.	
20 A No.		20 Q There was a discussion at that meeting about a heart	
21 Q That's -- His records at that time indicate that you		21 test of some kind, a stress test, do you remember that?	
22 were doing a chimney remodeling at your house. Do you		22 A Right, because – Yeah.	
	146		148
1 recall that?		1 Q How did -- What was that all about, what's the stress	
2 A Yes.		2 test all about?	
3 Q What was -- what was going on there?		3 A I thought maybe I was having problems with my heart,	
4 A The chimney started sagging in the floor, so I had		4 with the shortness of breath.	
5 somebody tear it down and redo it.		5 Q Okay. Do you remember what Dr. Weeks told you?	
6 Q Were you having problems breathing that you thought was		6 A Not offhand, I don't.	
7 related to --		7 Q Did he arrange for you to see a cardiologist?	
8 A Yes.		8 A Yes.	
9 Q -- with the chimney?		9 Q And did he arrange for you to have a stress test done?	
10 A With the dust or something like that, it stirred up		10 A Yes.	
11 something, that's what I thought.		11 Q And that was with or through Dr. Mast?	
12 Q That's why you went to see Dr. Weeks?		12 A That – Yeah, that was – would be correct. That's it.	
13 A Correct.		13 Q So in March of 2013, the shortness of breath and other	
14 Q Did he tell you that you had bronchitis again?		14 problems you were having, at least in your mind and	
15 A Yes.		15 Dr. Weeks' mind, it could be cardiac related?	
16 Q The third visit that I have recorded, from you visiting		16 A Yes.	
17 him, would have been on 9-17-2012, where you went in		17 Q And you wanted to see if it was cardiac related; true?	
18 and complained of nasal congestion. Do you remember		18 A Yeah. I wanted to find out what was going on, it	
19 making that complaint to him?		19 wasn't right.	
20 A Yes.		20 Q Okay. So you went to see Dr. Mast and had the	
21 Q You don't dispute that?		21 cardiac -- had the stress test?	
22 A No.		22 A Right.	

Transcript of Robert Newkirk
Conducted on February 8, 2017

38 (149 to 152)

149	151
1 Q The records show that was done in May of 2013. Is that 2 consistent with your memory of when it was done?	1 in a gas station about this?
3 A Yeah.	2 A She had a medical uniform on.
4 Q What was the results of the test, as far as you are 5 aware?	3 Q Oh, she didn't work there?
6 A I was okay.	4 A She didn't work at the gas station.
7 Q You didn't have any heart condition?	5 Q She looked like a medical provider to you?
8 A No.	6 A Right, right. And the name -- the neighbor lady said 7 the same thing, you know.
9 Q The heart wasn't causing your shortness of breath?	8 Q What do you mean, the neighbor lady said the same 9 thing?
10 A Correct.	10 A Yeah. She worked with elderly people. I asked her 11 about it. She said, yeah, you should talk to a 12 pulmonary specialist. So two people said the same 13 thing, so I looked and made a pulmonary specialist 14 appointment.
11 Q Okay. You understood that, if you had a coronary 12 condition of some kind, that could cause shortness of 13 breath?	15 Q When you would see -- when you saw Dr. Weeks, 16 Dr. McClellan, Dr. Mast, Dr. Knitter, they would all 17 ask you basic history about who you were, where you 18 worked, what you did?
14 A Correct.	19 A Right.
15 MR. HORVAT: Objection.	20 Q Is that correct?
16 Q (By Mr. Petrucelli) Did you know that to be a fact?	21 A Correct.
17 A (By the Witness) Yes.	22 Q And you would answer their questions to the best of
18 Q That's why you wanted to have your heart checked out?	150
19 A (Witness nodded head.)	152
20 Q You -- True?	1 your ability?
21 A True.	2 A Correct. Correct.
22 Q Then you see this Dr. McClellan two times in April of 1 2013; correct?	3 Q Did any doctor, prior to Dr. Knitter, ever tell you 4 that your respiratory disorder was caused or 5 contributed to inhalation of diesel fumes while you 6 worked for the railroad?
2 A Correct.	7 MR. HORVAT: Objection.
3 Q That's April 15th and April 29th, you saw him twice?	8 Q (By Mr. Petrucelli) Did any doctor ever tell you that?
4 A Right.	9 A (By the Witness) Knitter.
5 Q He is telling you about the carpet, removing it from 6 your house. Is he the doctor that told you to do that?	10 Q Knitter is the first doctor?
7 A Yes, the dust mites.	11 A Right. And --
8 Q And you did that?	12 Q Okay. I just --
9 A Yeah.	13 A Can I correct something? I made a mistake there.
10 Q And he told you to stop smoking?	14 After Knitter told me that, I did mention that to
11 A Yes.	15 Dr. Weeks, about diesel exhaust.
12 Q And he told you you had asthma?	16 Q Okay.
13 A Yes.	17 MR. HORVAT: That's fine.
14 Q And then, as a result of those meetings, and this 15 conversation with the woman at the gas station, you 16 decide to try to find somebody to figure out what's 17 going on with your pulmonary condition?	18 Q (By Mr. Petrucelli) So the first doctor that you ever 19 learned that your respiratory condition was related to 20 diesel -- inhalation of diesel fumes is Dr. Knitter?
18 A Um-h'm.	21 A (By the Witness) Correct.
19 Q Is that right?	22 Q There is a note in Dr. Knitter's records, 11-26-13. By
20 A Yes.	
21 Q I mean, who is this woman in the gas station? I don't 22 understand this. I mean, why would you talk to a woman	

Transcript of Robert Newkirk
Conducted on February 8, 2017

39 (153 to 156)

	153		155
1	the way, you started seeing Dr. Knitter, from my	1	his long-term exposure as a diesel engineer also played
2	records and my review of his records, in June of 2013?	2	a significant contributing factor. Do you remember
3	A That would be about right.	3	ever seeing that note?
4	Q June 28th is the note of the first visit; correct?	4	A Yes.
5	A Yeah.	5	Q Okay. My question to you is, you know that as of 11 --
6	Q That's what my notes say.	6	Did he give you a copy of that note?
7	A Yeah. I don't have it right in my hand.	7	A Yes.
8	Q Is that consistent with your memory?	8	Q Did he give it to you on or about 11-26-2013?
9	A Yes.	9	A I believe so.
10	Q So you saw him on 6-28-13, 7-9-2013, 7-18-2013,	10	Q Is that the first time anybody had ever told you that
11	8-13-2013, 9-16-2013, 11-26-2013, according to my	11	your long-term exposure as a diesel engineer played a
12	records. Okay?	12	significant contributing factor?
13	A Yeah.	13	MR. HORVAT: Objection.
14	Q I mean, you remember going to see him --	14	A (By the Witness) Yes.
15	A Yes.	15	Q (By Mr. Petrucelli) I don't see any entry by
16	Q -- almost monthly?	16	Dr. McLain (sic), Weeks, Mast, or any other doctor,
17	A Yes. When I first started, yes.	17	ever linking up to you or in their records, that your
18	Q And his records speak for themselves, of course, on	18	pulmonary disorder was related to diesel exposure.
19	what he was doing, and what he was trying to find out,	19	MR. HORVAT: Objection.
20	but there is a note I want to talk to you about. Okay?	20	A (By the Witness) That's true.
21	A Yeah.	21	Q (By Mr. Petrucelli) So my question is, did -- the
22	Q There is a written record, and it is dated 11-26-13,	22	first time anybody ever told you about this link was
	154		156
1	11 -- November 26, 2013, he concluded, in a note that	1	Dr. Knitter?
2	results from PFTs -- Do you know what a PFT is?	2	A Correct.
3	A No.	3	MR. HORVAT: Objection.
4	Q Pulmonary function test.	4	Q (By Mr. Petrucelli) Did you -- What -- When is the
5	A Okay.	5	first time you ever learned of a vascular -- or a
6	Q Do you remember having those?	6	respiratory disease known as pulmonary obstruction
7	A Yeah.	7	disease?
8	Q He says you were -- he said by then you were suffering	8	A (By the Witness) I never --
9	from severe COPD without any contributing factors, such	9	Q Or COPD, chronic obstructive pulmonary disease.
10	as allergy or any sort of deficiency of blood. Do you	10	A When did I learn about it?
11	understand that?	11	Q Yeah. When is the first time you ever heard of that
12	A Yes.	12	disease, when you were seeing these doctors?
13	Q He told you that?	13	A Yes. And I really didn't quite understand it. I know
14	MR. HORVAT: Objection.	14	that sounds stupid, but that's --
15	Q (By Mr. Petrucelli) Do you remember him telling you	15	Q And this note -- this note of Exhibit B?
16	that?	16	A I don't ever remember him telling me that.
17	A (By the Witness) Yes.	17	Q Okay. Who is Dr. Reynolds? Who is the Reynolds
18	Q He wrote in -- he wrote in his records -- there is a	18	Clinic?
19	record, quote, it is my -- and this is on 11-26-2013,	19	A That was the Reynolds Clinic.
20	it is my reasoned medical opinion that his respiratory	20	Q What is it?
21	disease is a result of multiple inhaled irritants.	21	A It is just a clinic, like an emergency room clinic, or
22	While his tobacco consumption did play a role, I feel	22	a doctor's clinic on Reynolds Street in Toledo, Ohio.

Transcript of Robert Newkirk
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40 (157 to 160)

	157		159
1 Q	And it says on the top, "Today's Complaint," and it is	1	MR. HORVAT: Objection.
2 highlighted in yellow. I mean, this is the only thing		2 Q	(By Mr. Petrucelli) When they -- when you -- When you
3 it says, "wants to quit smoking"?		3	moved the carpet out of your house, after Dr. McClellan
4 A Um-h'm. (Witness nodded head.)		4	told you to tell --
5 Q I take it you probably wanted to quit smoking for many		5 A (By the Witness) Yeah.	
6 years during your life?		6 Q	In April of 2013, when he told you to take the carpet
7 A Oh, yeah.		7	out, did that help? Did your breathing ever get
8 Q Including on 9-29-09?		8	better?
9 A Correct.		9 A	No. No. I only took it from the fireplace, like five
10 Q There is no other complaints mentioned on there?		10	foot, yeah.
11 A No.		11 Q	It didn't help?
12 Q Do you even remember being there on 9-29-09?		12 A	No.
13 A No.		13 Q	But you did what he told you?
14 Q And the plan of treatment, I can't even make out what		14 A	Yeah.
15 it says, but do you know if there was any treatment		15 Q	And you believed him, otherwise you wouldn't have done
16 that he gave you? Was it -- was this -- was there some		16	it, I take it; correct?
17 kind of drug called -- Did you take a particular kind		17 A	Right.
18 of drug to quit smoking?		18 Q	Had you ever heard of bronchitis before 10-18-2011?
19 A No. Only from -- I had a prescription from Dr. Weeks		19 A	No.
20 for that Chantix one. I --		20 Q	You never had any diagnosis like that before?
21 Q Well, I don't know if this says Chantix. I don't		21 A	Not that I recall.
22 really even know what this one word plan of treatment		22 Q	You really didn't know what it meant?
	158		160
1 is. But there was not any -- you don't remember any		1 A	No. No, I didn't.
2 treatment that this doctor -- Reynolds Clinic gave you?		2 Q	Just so we are clear on something. You also told
3 MR. HORVAT: Objection. The record speaks		3	Dr. Weeks, the first time you saw him, that you wanted
4 for itself.		4	to be weaned off of your morphine on that occasion;
5 A (By the Witness) No.		5	correct?
6 Q Do you remember any clinic -- any treatment that was		6 A	Correct.
7 provided by the Reynolds Clinic?		7 Q	And did he refer you to a doctor for that?
8 MR. HORVAT: Objection.		8 A	No.
9 A (By the Witness) No.		9 Q	He didn't?
10 Q (By Mr. Petrucelli) When you worked for the railroad,		10 A	No. He said I should go to a --
11 from the time you started until the time you last		11 Q	A pain clinic?
12 worked there, did anyone at the railroad ever tell you		12 A	No. I -- A pain clinic or a facility for to get clean,
13 that exposure to diesel fumes could cause you to suffer		13	or whatever. It's like I don't need that. I already
14 a respiratory disease?		14	went through an alcohol thing. I know what's going on.
15 A Not that I recall.		15	Is there anything that you can give me to help me with
16 MR. HORVAT: Objection.		16	the withdrawals? No, you have got to go to -- Well,
17 Q (By Mr. Petrucelli) Did the railroad, while you worked		17	hey, so I did it cold turkey.
18 there, ever have you seen by a pulmonologist?		18 Q	So you just quit taking them?
19 A (By the Witness) No.		19 A	Yeah.
20 Q You didn't have any pulmonology tests while you worked		20 Q	So you --
21 at the railroad?		21 A	I was sick for like two weeks.
22 A No.		22 Q	Okay. So you haven't taken any pain medication for the

Transcript of Robert Newkirk
Conducted on February 8, 2017

41 (161 to 164)

	161		163
1	neck problems since you went cold turkey?	1	A Correct.
2	A Correct.	2	Q You sold your home -- you told us that you sold your
3	Q And was that after you saw Dr. Weeks in 2011?	3	home in December of 2016?
4	A Yeah.	4	A Correct.
5	Q 10-18-2011?	5	Q What prompted you to do that?
6	A Yeah.	6	A I couldn't take care of it no more. I couldn't afford
7	Q So you didn't see a doctor?	7	to pay other people to take care of it. It was
8	A No.	8	breaking me.
9	Q Didn't go to a pain clinic?	9	Q You were physically incapable of doing it?
10	A No. I have already went through all of that.	10	A Correct.
11	Q I am just saying, you didn't do that?	11	Q And what physical impairments prevented you from taking
12	A No. I know if you take an alcoholic and an opium	12	care of it?
13	addict --	13	A My lungs.
14	Q No, no, no. I didn't ask all of those questions.	14	(Discussion off the record.)
15	A Okay.	15	Q (By Mr. Petrucci) You haven't smoked since 2013,
16	Q I just said, you didn't see a doctor --	16	since --
17	A Correct.	17	A (By the Witness) Oh, I -- I have smoked --
18	Q -- to withdraw --	18	MR. HORVAT: Objection.
19	A Correct.	19	A (By the Witness) -- after that.
20	Q -- the use of those medications?	20	Q (By Mr. Petrucci) When did you stop completely?
21	A Correct.	21	A I am not sure on the date. It is -- you know, I really
22	Q And those were prescribed medications?	22	can't say.
	162		164
1	A Correct.	1	Q What year? You have stopped?
2	Q So since 2013 and the diagnosis, what's the trajectory	2	A Yes. I -- Yeah, I am not smoking.
3	of the -- of your condition? Has it -- has it stayed	3	Q Okay. Now, you have lost weight over the last four
4	the same, got worse, got better, what?	4	years; correct?
5	A It ain't going to get better.	5	A Yeah.
6	Q Has it -- What's the trajectory, has it gotten worse?	6	Q What is your present weight?
7	A Well, yeah. There is only one way it is going to go,	7	A 120.
8	is when I go in the ground.	8	Q 120. What was your weight when you saw Dr. --
9	Q Well, that's probably true for all of us.	9	Dr. Weeks in --
10	A I -- Yeah. None of us are getting out of here alive.	10	A I am not sure, about 160.
11	I am just going to beat a lot of people to it.	11	Q What do you ascribe your weight loss to?
12	Q I am just asking you to tell us, if you would --	12	A This disease. Can I go to the bathroom?
13	A My prognosis?	13	(Discussion off the record.)
14	Q No, I didn't ask you for that.	14	MR. PETRUCCI: I don't have any further
15	A What are you asking?	15	questions. Thank you.
16	Q I am asking you a very simple question, have you gotten	16	MR. HORVAT: I just have a couple of
17	worse --	17	follow-up, sir.
18	A Yes.	18	EXAMINATION
19	Q -- since 2013?	19	BY MR. HORVAT:
20	A Yes, a lot worse.	20	We talked a little about smoking, and we talked about
21	Q And you continue to see -- and have continued to see	21	the warning labels on cigarettes. Do you recall them
22	Dr. Knitter for care and treatment?	22	stating that they could cause lung or respiratory

Transcript of Robert Newkirk
Conducted on February 8, 2017

42 (165 to 168)

	165		167
1	issues, the warning labels?	1	started getting harder and harder.
2	A Yes.	2	Q Okay.
3	Q And you still continued to smoke, sir, despite those	3	A So, yeah, I paid people to give me a hand.
4	warnings labels?	4	Q Okay. How much did you pay someone to chop the wood?
5	A Yes. Correct, I did.	5	A Maybe – It depended on the – like ten bucks a cord, a
6	Q You talked with your attorney about having to sell your	6	face cord, or whatever.
7	home because you couldn't take care of it?	7	Q Okay. Do you know how many times you had to do that,
8	A Right.	8	pay someone ten bucks?
9	Q And you couldn't afford to pay people to help you take	9	A Every year.
10	care of it; correct?	10	Q Okay. For how many years?
11	A And plus where it was at, with the winter and the	11	A What was I there, six – well, ever since the second
12	summer.	12	year there, third year there, starting on the third
13	Q Did you have to pay anybody to do any work around the	13	year there, so three years.
14	house?	14	Q Okay. And what about cutting your grass, did you have
15	A Yeah.	15	to pay someone to cut your grass?
16	Q Okay. Who did you have to pay?	16	A Yes.
17	A People that cut my lawn.	17	Q Okay. How -- What did you pay them?
18	Q Okay.	18	A Thirty-five – thirty-five bucks a time.
19	A Did the snowplowing.	19	Q Okay. And --
20	Q Okay.	20	A I got a lawn service guy.
21	A Or if I needed something fixed, wood, yeah.	21	Q Okay. And the reason -- Was one of the reasons why you
22	Q Okay. Did you previously do that stuff yourself?	22	hired the lawn service guy because of your COPD?
	166		168
1	A Yeah.	1	A Yeah.
2	Q Okay.	2	Q Okay. Previously, did you cut the grass yourself?
3	A Yeah, you – I enjoyed chopping wood.	3	A I gave the job to the neighbor kid.
4	Q Okay. When did you stop chopping wood, or cutting the	4	Q Okay.
5	grass, or shoveling your driveway, or plowing your	5	A I -- I had a lawn mower. I would do it or --
6	driveway?	6	Q Okay.
7	A Probably – I never plowed my driveway.	7	A His family needed kind of help, so I -- I kind of like
8	Q Okay.	8	gave him a job to help them out, and they ended up
9	A I paid for that to be done because it was such a long	9	being not the very best people.
10	driveway.	10	Q Okay. But you couldn't cut the grass because of your
11	Q Okay. Can I ask you this, did you pay for someone to	11	11 COPD, is that right, or is that not right?
12	plow your driveway before you got diagnosed with COPD?	12	A At first I could.
13	A Yes.	13	Q Okay.
14	Q Okay.	14	A But as the time went on, I couldn't. That's when I --
15	A I never shoveled my driveway or never plowed it. I	15	Q Hired the lawn service?
16	hired it out.	16	A -- hired a lawn service to take care of that stuff.
17	Q Okay. And you had to pay someone to chop wood for you?	17	Q Do you approximately know how much you spent on that
18	A I – Yeah, I did.	18	lawn care service?
19	Q That was because of your diagnosis of COPD?	19	A Probably 70 bucks a month.
20	A Yes.	20	Q For how many years?
21	Q Okay.	21	A Three.
22	A I mean the first two years, I did it. I struggled. It	22	Q And that would have only been in the summertime

Transcript of Robert Newkirk
Conducted on February 8, 2017

43 (169 to 172)

	169		171
1	obviously?	1	A Yes. I didn't know— Well, excuse me.
2	A Right.	2	Q That's okay. How did you get their numbers or contact
3	MR. HORVAT: I am just showing him the	3	information?
4	11-26-13 from Dr. Knitter that you talked about.	4	A Internet.
5	MR. PETRUCELLI: Yeah. Do you want to mark	5	Q Okay.
6	this?	6	A And my ex-union man, Davie Fernald, works with them,
7	(Exhibit E marked for identification.)	7	Holland & Holland —
8	Q (By Mr. Horvat) I am going to show you this record.	8	Q Okay, very good.
9	Maybe you can help enlighten me. It is 11-26 -- dated	9	A — as an investigator.
10	11-26-2013. It is a record from Dr. Knitter. I have	10	MR. HORVAT: Okay. That's fine. That's all
11	highlighted a portion. It says -- Under "Impression,"	11	I have.
12	it says, "Dear Sirs." Do you have any idea who he is	12	EXAMINATION
13	addressing that to, Dr. Knitter?	13	BY MR. PETRUCELLI:
14	A (By the Witness) No, I don't.	14	Q So would you have contacted those lawyers after the
15	Q Okay.	15	Knitter report of 11-26 --
16	MR. PETRUCELLI: Could be me. Could be	16	A I believe I did.
17	anybody.	17	Q -- 2013?
18	MR. HORVAT: I want just to see if he knows.	18	A I believe.
19	MR. PETRUCELLI: Dear sirs, I am a sir.	19	MR. HORVAT: Objection.
20	A (By the Witness) No, I really don't.	20	THE WITNESS: I believe I did.
21	MR. HORVAT: Okay.	21	MR. HORVAT: But you don't know for sure?
22	MR. PETRUCELLI: Question better left for	22	THE WITNESS: No.
	170		172
1	Dr. Knitter.	1	Q (By Mr. Petruccelli) Is it your best memory that you
2	MR. HORVAT: I am sure I will talk to	2	would have been contacting them after the Knitter
3	Dr. Knitter.	3	report?
4	Q (By Mr. Horvat) Did you ever have a previous diesel	4	MR. HORVAT: Objection.
5	fume claim or suit before this?	5	A (By the Witness) Yes.
6	A (By the Witness) No.	6	Q (By Mr. Petruccelli) Is that your testimony?
7	Q Okay. Did you ever retain an attorney prior to	7	A Yes.
8	Mr. Petruccelli?	8	MR. HORVAT: That's all I have for you,
9	A No.	9	Mr. Newkirk.
10	Q Okay. Does the firm of Holland Groves ring a bell?	10	MR. PETRUCELLI: Thank you, Mr. Newkirk.
11	A Oh, I talked to them.	11	*****
12	Q Do you know when you talked to Holland Groves?	12	(The deposition concluded at about 1:32 p.m. CST)
13	A No, I don't.	13	
14	Q Do you know what year?	14	
15	A No, I don't. I also talked to Collins & Collins.	15	
16	Q Okay. Do you recall when you spoke to Mr. Collins or	16	
17	Mr. Holland?	17	
18	A No, I don't. No, I don't.	18	
19	Q That would have been as a result of diesel fume -- your	19	
20	diesel issues?	20	
21	A Yes.	21	
22	Q Or your COPD?	22	

Transcript of Robert Newkirk
Conducted on February 8, 2017

44 (173 to 176)

1 STATE OF MICHIGAN)
2)
3 COUNTY OF MARQUETTE)
4 I certify that this transcript, consisting of 153
5 pages, is a complete, true, and correct record of the
6 testimony of ROBERT NEWKIRK, held in this case on
7 February 8, 2017.
8 I also certify that prior to taking this
9 deposition ROBERT NEWKIRK was duly sworn to tell the
10 truth.
11 That said testimony was taken by me stenographically
12 and thereafter reduced to typewriting under my direction;
13 that reading and signing was not requested; and that I
14 am neither counsel for, related to, nor employed by any
15 of the parties to this case and have no interest,
16 financial or otherwise, in its outcome.
17 In Witness whereof, I have hereunto set my hand and
18 affixed my notarial seal this 13th day of February, 2017.
19 My commission expires: November 11, 2022.
20 Date *Sandra A. Larson* Sandra A. Larson, CSR-2916, RMR
21
22

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Safety Analysis Report

Re: Robert Newkirk v. Consolidated Rail Corp and Norfolk Southern Railway Co., In the United States District Court District of Michigan Southern Division.

1.0 Scope of Opinion

The law firm of Petrucelli Waara, located at 328 West Genesee Street, P.O. Box AA, Iron River, Michigan 49935, retained the services of George A. Gavalla to review relevant materials; review safety rules, procedures and standards; examine relevant documents, review testimony and evidence obtained through discovery relative to the case of *Robert Newkirk v. Consolidated Rail Corp and Norfolk Southern Railway Co., In the United States District Court District of Michigan Southern Division*. I was asked to offer opinions, within a reasonable degree of professional certainty within my area of expertise in railroad safety, regarding standards of care embodied in railroad safety laws and regulations relating to the control of diesel exhaust gasses in railroad locomotives. More specifically, I was asked to offer opinions, within a reasonable degree of certainty within my area of expertise in railroad safety, regarding the following questions:

- 1) Whether the entrance of diesel exhaust gasses into the occupied cab of locomotives constitutes a violation of Federal Locomotive Safety Standards 49 CFR Part 229.43 (a);
- 2) Whether the conditions reported by Robert Newkirk while employed by the defendant railroads namely, the entrance of diesel exhaust gasses into locomotive cabs from underneath floor boards, through electrical cabinets, through heater blowers, and from outside air leaks around doors and windows, constitute violations of Federal Locomotive Safety Standard – 49 CFR Part 229.43 (a); and
- 3) Whether the Federal Locomotive Safety Standards – 49 CFR Part 229.43 (a) is a strict liability standard which requires railroads to ensure that their locomotive cabs remain free of diesel exhaust gasses at all times when a locomotive is in service or offered for service, regardless of whether the railroad had prior knowledge of the diesel exhaust gas leaks. The following is a report of my findings and opinions within a reasonable degree of certainty within my area of expertise in railroad safety.

2.0 Statement of Qualifications

I, George Gavalla, have 40 years experience in the railroad industry and possess substantial railroad safety expertise. I began my railroad career in 1976 as an employee of Consolidated Rail Corporation. In 1995, I joined the Federal Railroad Administration (FRA) as a Safety Project Coordinator, where I led large scale railroad safety audits of major railroads.

In October 1997, I became head of the FRA Office of Safety, the largest office within FRA with over 70 percent of the agency's personnel, and served in that capacity until early 2004. As the senior official in the Office of Safety, I was tasked with overseeing the safety of our nation's railroads, promulgating new and revised Federal railroad safety regulations, overseeing the enforcement of Federal railroad safety regulations and conducting railroad accident investigations. During my tenure, railroad related fatalities

declined to their lowest levels in history; total railroad related deaths declined by 19 percent, while railroad employee fatalities declined 48 percent.

Also I have substantial knowledge and experience regarding locomotive inspection and maintenance regulations and practices. For example, from 1996 through October of 1997, I led FRA's Safety Assurance and Compliance Program audit of Amtrak and of the Union Pacific, large scale, comprehensive safety audits involving all of these railroads' operations; including their locomotive maintenance and inspection practices. These safety audits included investigations of safety issues and compliance with Federal railroad safety standards related to locomotives.

I possess firsthand knowledge of Federal locomotive inspection and maintenance requirements, having periodically accompanied FRA Motive Power and Equipment (MP&E) Safety Inspectors during on-site inspections of locomotives and locomotive maintenance facilities. Also, I have read technical publications and had frequent professional consultations, briefings, meetings and correspondence with both FRA and railroad industry locomotive safety experts regarding locomotive safety issues. Finally, during my tenure, I directed the FRA MP&E staff to revise the agency's guidance regarding the enforcement of Federal safety regulations for locomotives and railroad cars. I provided the final level of review, comment and approval of the revised enforcement guidance.

A copy of my Curriculum Vitae is provided in Appendix A of this report.

3.0 Fee Schedule

A copy of my Fee Schedule is attached as Appendix B of this report.

4.0 Statement of Facts

Robert Newkirk was hired by Consolidated Rail Corporation (Conrail) in 1976 as a laborer in its diesel shop in Grand Rapids, Michigan. Beginning in 1977 thru 1978, Mr. Newkirk worked for Conrail as a fireman aboard diesel locomotives. Beginning in 1979 he was promoted to a locomotive engineer's position, operating diesel locomotives, and worked as a locomotive engineer for Conrail thru 1999 when the railroad became part of the Norfolk Southern (NS) railroad. At that time, Mr. Newkirk became employed by NS and worked until 2005 as an engineer operating diesel locomotives. (Complaint and Jury Demand, P. 3)

Mr. Newkirk has indicated that during his employment with Conrail and NS, he was continuously exposed to diesel exhaust which would infiltrate into the locomotive cabs through holes in the floor, cracks in window and door seals and through the equipment compartment of the locomotives. (Complaint and Jury Demand, P. 3)

The Federal Railroad Administration (FRA) issued Locomotive Safety Standards that address various aspects of locomotive safety, including the control of exhaust gasses.

These standards were first issued in Federal railroad safety regulation 49 CFR Part 230. In 1980 this regulation was revised so that non-steam locomotive safety standards were removed from the regulation and placed in a new regulation 49 CFR Part 229. Both the older and newer regulation contained provisions regarding the control of exhaust gasses in locomotives. The current locomotive safety standard contain a provision known as 49 CFR §229.43 (a) which states:

§229.43 Exhaust and battery gasses.

(a) Products of combustion shall be released entirely outside the cab and other compartments. Exhaust stacks shall be of sufficient height or other means provided to prevent entry of products of combustion into the cab or other compartments under usual operating conditions

FRA also issues guidance to FRA inspectors regarding the application of the provisions of 49 CFR Part 229. This guidance is found in the FRA Motive Power and Equipment Compliance Manual, which is available to the public on the FRA web site.

On March 14, 1978, FRA and the Occupational Safety and Health Administration (OSHA) issued a joint policy statement delineated their respective regulatory agency jurisdictions in regards to the railroad industry. That statement declared that FRA's regulations, not OSHA's, were applicable regarding the regulation of air contaminants in locomotive cabs.

Toxic and Hazardous Substances (Subpart Z) - The OSHA regulations apply according to their terms, except with respect to . . .the regulation of air contaminants in locomotive cab and caboose environments. . . . Specific FRA regulations bearing on the locomotive cab environment address cab ventilation. (49 CFR §230.229 (f) (2)) and exhaust gasses (49 CFR §230.259) . . .it is possible that situations may exist in which short-term exposure which meets OSHA standards may still affect the ability of employees properly to perform their duties and many cause serious discomfort. (FR Vol. 43, No. 50, P. 10589 – Tuesday, March 14, 1978)

49 CFR §230.259 was subsequently recodified as 49 CFR §229.43(a) in 1980 when the FRA revised 49 CFR Part 230 by separating out provisions regarding non-steam locomotives and placing them in a new regulation 49 CFR Part 229. (See FR Vol. 45 No. 63 – Monday, March 31, 1980.)

FRA also conducted a study of locomotive safety and locomotive cab working conditions that investigated issues related to entry of airborne diesel exhaust gasses into locomotive cabs from outside the locomotive. This study was described in an FRA report to Congress in 1996.

5.0 Information Reviewed

A list of the information reviewed in conducting this evaluation is contained in Appendix C of this report.

6.0 Findings and Opinions

The methodology that I typically employ in the analysis of accident, injury or illness cases is based on root cause analysis, which examines work place incidents in the broad context of the total work environment in which the incident(s) or injuries occurred. This methodology, sometimes referred to as a systems approach to safety, examines all factors that have the potential to cause, contribute to or permit an accident to occur and analyzes them as part of a complex whole to determine the links, if any, between the various factors and the accident event itself. This approach is widely utilized in the investigation of industrial accidents and is the methodology that the Federal Railroad Administration (FRA) Accident Investigation Guidelines which state "This level of investigation not only establishes the root cause(s) of the accident, but also determines the conditions and situations that led to the accident. . . . By determining the antecedents of the accident, appropriate remedial actions can be taken to prevent future similar occurrences. (FRA General Manual 2009; Chapter 4 - Accident Investigation Guidelines P. 38)

Also, I utilized my specialized knowledge and experience in railroad safety; especially the application of complex railroad operating and safety rules, procedures and practices and the application of complex railroad safety regulations and standards, to provide relevant information to assist the triers of fact in understanding the issues in reaching their decisions.

While I do not purport to speak for the FRA, the federal agency that promulgates our nation's safety regulations and standards, I am aware of the many policy and regulatory documents where FRA describes the purpose, intent and application of railroad safety regulations, standards, guidelines and recommendations and I provide this information when analyzing the issues and rely on this knowledge when formulating my opinions.

Railroads are required to conduct their day-to-day operations in accordance with relevant Federal and state railroad safety regulations and standards. To accomplish this, it is necessary for railroads and railroad workers to understand how to apply those regulations and standards to everyday railroad work activities and the railroad environment.

Throughout my career as a railroad safety professional, I too, was required to understand how Federal and state regulations and standards apply to everyday railroad work activities and railroad work environment. I relied on this knowledge when formulating my findings and opinions.

Similarly the railroad industry has devised various industry standards and best practices to ensure the safety of railroad operations and railroad workers. Furthermore, individual railroads have their own rules, standards, procedures and practices for the purpose of ensuring the safety of railroad operations and the railroad workforce. However, to accomplish this purpose, it is necessary for individual railroads to apply these industry standards and company rules, procedures and practices to their everyday work activities and the work environment. Again, during my career as a railroad safety professional, it was necessary for me to understand how railroad industry standards and company rules, procedures and practices apply to everyday railroad work activities and railroad work environment. I relied on this knowledge when formulating my findings and opinions.

During my career as a railroad safety professional, it was often necessary for me to be involved in the investigation of railroad accidents and incidents to determine the likely cause(s) and contributing factors. To carryout these investigations it was necessary to consider the vast complex of governmental, industry and company directives and guidelines to identify specific regulations, standards, rules that were relevant to the facts and circumstances surrounding the accident or incident. Also, it was necessary to analyze the facts surrounding the accident or incident to determine cause(s) and contributing factors and determine whether the relevant regulations, standards, rules, procedures and practices were properly applied. I followed this methodology when formulating my findings and opinions for this case.

The following opinions are based on my background, education, experience and information provided thus far and are stated within a reasonable degree of certainty within my area of expertise in railroad safety.

6.1 Locomotive Cabs to Be Kept Free of Diesel Exhaust Gasses

The first question to be considered is whether the entrance of diesel exhaust gasses into the occupied cab of locomotives constitutes a violation of Federal Locomotive Safety Standards 49 CFR §229.43 (a). To answer this question one must first look to the plain language of the standard itself. 49 CFR §229.43 (a) states:

§229.43 Exhaust and battery gasses.

(a) Products of combustion shall be released entirely outside the cab and other compartments. Exhaust stacks shall be of sufficient height or other means provided to prevent entry of products of combustion into the cab or other compartments under usual operating conditions. (Emphasis added)

The railroad industry standard of care regarding diesel exhaust gasses from railroad locomotives, as embodied in 49 CFR §229.43 (a), is clear and unequivocal in stating such diesel exhaust gasses must be “released entirely outside the locomotive cab.” Therefore, it is unacceptable for diesel exhaust gasses generated by a locomotive’s diesel engine to be released inside the locomotive cab.

Diesel exhaust leaks occur inside the engine compartment of a locomotive, typically through cracks in the exhaust manifold, exhaust manifold gasket or expansion bellows. Once inside the engine compartment, diesel exhaust gasses can migrate into the locomotive cab through electrical cabinets or from under the floorboards of the locomotive cab. (See Attachment No. 1) While modern locomotives are typically designed with pressurized engine compartments intend to promote the exhaustion of diesel fumes from the exhaust stack, leaks in a locomotives diesel exhaust system still have the potential to migrate into the cab.

The standard of care set forth in 49 CFR §229.43 (a) calls for diesel exhaust gasses to be released “entirely outside the cab or other compartments.” Therefore, it is unacceptable

and contrary to the aforementioned standard of care whenever exhaust gasses from a locomotive are released into the engine compartment and enter the cab. If an FRA inspector were to find diesel exhaust gasses entering a locomotive cab from the engine compartment, he or she would take exception and require remedial action be taken to rectify the condition.

Because of the hazards associated with diesel exhaust gasses, the standard of care established by 49 CFR §229.43 (a) also calls for measures to prevent locomotive diesel exhaust gasses that have been released outside the locomotive from entering into the locomotive cab. More specifically, the standard of care states that the “exhaust stacks shall be of sufficient height or other means provided,” to prevent diesel exhaust gasses from entering the cab “under usual operating conditions.” Typically, exhaust stacks located on top of the locomotive behind the cab and effective seals around windows and doors on the locomotive cab are some of the means for preventing entry of diesel exhaust gasses. However, if the exhaust stacks were located directly in front of a window of a locomotive cab or the seals around windows or doors were defective and were found to allowed diesel exhaust gasses to enter the cab, such a condition would be unacceptable and would not meet the standard of care embodied in 49 CFR §229.43 (a).

An example of locomotive where the stacks appear to be of insufficient height to prevent diesel exhaust gasses from entering a locomotive cab appears to be found in a photocopy of a photograph included in defendant’s Exhibit 15F (page 725). The photocopy was part of a file from the Industrial Hygiene Department of Conrail involving an investigation and air sampling of diesel exhaust gasses in response to a complaint about diesel exhaust fumes in the railroad’s yard locomotives in Reading, Pennsylvania. While the photocopy of the picture is of very poor quality, it appears to show exhaust stacks directly in front of the widow of the locomotive cab and it contains the notation:

“Reading Yard: Stacks on Engine are not high
enough; exhaust flows inside cab
:Engine Built in 1972

Of course there may be unusual conditions where some amount of diesel exhaust gasses may enter a locomotive cab from outside the locomotive. In 1980, FRA issued a final rule in that revised the locomotive safety standards and separated them from the steam locomotive standards. That final rule discussed the provisions of 49 CFR §229.43 (a) by noting the following:

§229.43 Exhaust and battery gasses

The final rule reflects a return to the language of the current requirement (§230.259) that means must be provided to prevent entry of products of combustion into the cab *under usual operating conditions*. This change has been made because it is impossible to prevent the entry of some fumes into the cab in certain unusual wind and weather conditions. . . . (FR Vol. 45, No. 63, P. 21098 – Monday, March 31, 1980)

Thus, under certain “unusual wind or weather conditions,” some diesel exhaust gasses may enter a locomotive; however, under normal operating conditions, such gasses must

be prevented from entering a locomotive cab. For example, if a locomotive stops temporarily under a highway bridge and the wind conditions cause exhaust gasses to enter the cab. If a limited amount diesel exhaust gasses were to temporarily enter a locomotive cab due to such unusual wind or weather conditions, the locomotive would still be considered to have met the standard of care described by 49 CFR §229.43 (a).

It must be noted that some railroads have alleged that the standard of care embodied by 49 CFR §229.43 (a) is met if diesel exhaust gasses inside a locomotive cab do not exceed exposure limits for various products of combustion established by the Occupational Safety and Health Administration (OSHA). More specifically, some railroads have relied on a letter from Mr. Edward English, formerly of the FRA Office of Safety, to W.E. Honeycutt, Assistant Vice President - Operating Rules, Norfolk Southern Corporation dated April 4, 1996, that references the FRA's Locomotive Safety Standards, 49 CFR §229.43(a) and states:

the phrase 'to prevent entry of products of combustion into the cab' only relates to the height of the exhaust stack . . . where exhaust gas accumulations in locomotive cabs are brought to FRA's attention, accepted methods of testing for gas is performed and if the readings are less than the standards set forth in the Occupational Safety and Health Administration regulations, no action is required. (NS Exhibit 23 – NS0001919-1920)

The contention in Mr. English's letter that the phrase "to prevent entry of products of combustion into the cab" only relates to the height of the exhaust stack is contrary to the plain language of the standard which clearly states, "Exhaust stacks shall be of sufficient height or other means provided to prevent entry of products of combustion into the cab" (Emphasis added). Also, the contention that exhaust gas accumulations in locomotive cabs below OSHA exposure limits are acceptable is contrary to the plain language of the standard with clearly states "Products of combustion shall be released entirely outside the cab." The standard of care set forth in 49 C.F.R. §229.43(a) makes no reference, whatsoever, to OSHA standards.

Moreover, FRA and OSHA issued a joint policy statement that delineates the regulatory jurisdiction of each agency as it applies to the railroad industry. In the joint statement, FRA made it crystal clear that OSHA exposure thresholds are not applicable to diesel exhaust gasses entering locomotive cabs. FRA asserted that even small amounts of diesel exhaust gasses in locomotive cabs are an unacceptable hazard. This Joint Policy Statement declares, in pertinent part:

Toxic and Hazardous Substances (Subpart Z) - The **OSHA regulations apply according to their terms, except with respect to . . . the regulation of air contaminants in locomotive cab** and caboose environments. It is the judgment of FRA that the exposure of operating employees to air contaminants in the locomotive cab or caboose environment is an issue integrally related to the ability of employees to perform their duties and to the regulation of the rail equipment itself. Thus air contaminant exposure in those particular environments must be viewed as a concern within two of the regulatory fields over which FRA has exercised jurisdiction (rail equipment, human factors). **Specific FRA regulations bearing on the locomotive cab environment address cab ventilation.** (49 CFR §230.229 (f) (2)) and exhaust gasses (49 CFR §230.259) . . . it is possible that situations may exist in which **short-term exposure which meets OSHA**

standards may still affect the ability of employees properly to perform their duties and many cause serious discomfort. (Emphasis added) (See: FR Vol. 43, No. 50, P. 10589 – Tuesday, March 14, 1978)

49 CFR §230.259 was subsequently recodified as 49 CFR §229.43(a) in 1980 when the FRA revised 49 CFR Part 230 by separating out provisions regarding non-steam locomotives and placing them in a new regulation 49 CFR Part 229. (See FR Vol. 45 No. 63 – Monday, March 31, 1980.)

It must be noted that no individual in the FRA Office of Safety has the authority to issue interpretations of federal railroad safety regulations or statutes. During my tenure as Associate Administrator, the FRA re-issued its policy statement to all Office of Safety personnel that every regulation should be given its plain meaning. The regulation says what it means and means what it says. Should a question arise regarding the meaning or intent of a federal railroad safety regulation, the question should be put to the FRA Office of Chief Counsel who would then issue written guidance regarding the interpretation of the regulation. Also, the FRA may publish Technical Bulletins and Enforcement Manuals (also called Compliance Manuals) after Chief Counsel's approval, that contain official FRA interpretations of federal railroad safety regulations.

I have reviewed FRA MP&E Technical Bulletins and the Compliance Manual and have found no FRA interpretations regarding 49 C.F.R. §229.43(a) that supports the above referenced contentions in Mr. English's April 4, 1996 letter. Mr. English is not, and was not, FRA Chief Counsel, nor did his letter come from the FRA Office of Chief Counsel. Therefore, the above referenced letter does not represent the interpretation or position of the FRA.

It is significant to note, that FRA Motive Power and Equipment (MP&E) Inspectors are responsible for enforcing the provisions of 49 C.F.R. §229.43(a). During my tenure at FRA, MP&E inspectors had neither the training nor the equipment to monitor OSHA exposure level for diesel exhaust components or other airborne contaminates.

For example, in December 1994 FRA undertook a study of diesel exhaust gasses entering locomotive cabs from outside sources by monitoring diesel exhaust gas accumulation in locomotives travelling through a long tunnel as part of a study of locomotive safety. To perform the study it was necessary for FRA to train the FRA inspectors how to use the equipment to perform the air sampling on 11 trains. The air sample study results were published in FRA's Report to Congress – Locomotive Crashworthiness and Cab Working Conditions, (FRA Report) which stated, in pertinent part:

- **Before any tests were conducted, the Industrial Hygienist (IH) provided each inspector with instructions on how to use and test the sampling air pumps and test tubes.**
- Each inspector performed a 'dry run' of the testing that would be conducted in the tunnel.
- The IH verified that each inspector could properly perform the test.

* * *

- **MP&E inspectors conducted, prior to each run, the normal locomotive safety inspection, placing emphasis on exhaust problems and/or leaks.**
* * * (Emphasis added) (FRA Report, Chpt. 7, P.12)

The FRA Report clearly illustrates that normal locomotive safety inspections include inspecting for exhaust leaks. Also, the fact that the FRA inspectors required training to use the air sampling test equipment prior to performing the air sampling required for the air quality study is a clear indication that air sampling is not a normal part of FRA locomotive safety inspections.

FRA Report also examined railroad employee injury reports involving air quality in locomotive cabs over a five year period and found the following:

These data show that approximately 50 crew members per year report illnesses due to cab air quality resulting in almost 1000 days lost time per year. (FRA Report, Chpt. 7, P. 7-8)

Based on the foregoing, it is my opinion, within a reasonable degree of professional certainty within my area of expertise in railroad safety that:

- 1) The railroad industry standard of care established by the provisions of 49 C.F.R. §229.43(a) is clear on its face that locomotive diesel exhaust gasses must be “released entirely outside the cab” of the locomotive. Once diesel exhaust gasses have been released outside the locomotive, railroads must provide means to keep the exhaust gasses from entering the cab, including exhaust stacks of sufficient height and other means which typically include effective seals around cab doors and windows. The only exception to this standard of care is when “unusual operating conditions” such as unusual wind or whether conditions, cause some diesel exhaust gasses to enter a locomotive cab.
- 2) Some railroad’s have alleged that the standard of care embodied by 49 CFR §229.43 (a) is met if diesel exhaust gasses inside a locomotive cab do not exceed exposure limits set by OSHA. More specifically, railroads have cited a letter from Mr. Edward English, formerly of the FRA Office of Safety, to W.E. Honeycutt, Assistant Vice President - Operating Rules, Norfolk Southern Corporation dated April 4, 1996 regarding that contention. However, these allegations are contrary to the plain language of the standard itself, which asserts diesel exhaust gasses shall be “released entirely outside the cab,” and “means provided to prevent entry of products of combustion into cabs;”
- 3) No individual in the FRA Office of Safety has the authority to issue interpretations of federal railroad safety regulations or statutes. During my tenure as Associate Administrator, the FRA re-issued its policy statement to all Office of Safety personnel that every regulation should be given its plain meaning. The regulation says what it means and means what it says. FRA regulatory interpretations are issued in Technical Bulletins, Enforcement Manuals (Compliance Manuals), official interpretations from the Office of Chief Counsel. Having reviewed FRA Technical Bulletins and the Compliance Manual regarding Locomotive Safety Standards, no FRA interpretations have been found

regarding 49 C.F.R. §229.43(a) that support the above referenced contentions in Mr. English's letter;

4) Moreover, in a joint policy statement with OSHA, FRA made it clear that OSHA exposure thresholds are not applicable to diesel exhaust gasses entering locomotive cabs; rather, the aforementioned standard of care set forth in 49 CFR §229.43 (a) is applicable. FRA also indicated that even short term exposure diesel exhaust gasses in locomotive cabs is unacceptable;

5) Also, FRA MP&E Inspectors who are responsible for enforcing the provisions of 49 CFR §229.43(a) had neither the training nor the equipment to monitor OSHA exposure levels for diesel exhaust components or other airborne contaminates. For example, in December 1994, when FRA undertook a study of diesel exhaust gasses entering locomotive cabs from outside sources, which required air sampling to test for the products of combustion. FRA relied on its own MP&E inspectors to conduct the study but first it had to train them how to use the equipment to perform the air sampling. Also, prior to taking air samples on the locomotives, FRA stated the MP&E inspectors conducted "normal locomotive safety inspections" that emphasized, "exhaust problems and/or leaks." Thus, it is readily apparent that air sampling for OSHA exposure limits is not part of the normal locomotive safety inspections for diesel exhaust leaks.

6.2 Locomotive Conditions Reported by Mr. Newkirk

Another question to be considered is whether the conditions reported by Robert Newkirk while employed by the defendant railroads namely, the entrance of diesel exhaust gasses into locomotive cabs from underneath floor boards, through electrical cabinets, through heater blowers, and from outside air leaks around doors and windows, constitute violations of Federal Locomotive Safety Standard – 49 CFR §229.43 (a).

Locomotive diesel exhaust gasses that enter the locomotive cab through electrical cabinets and heater blowers most assuredly originated from exhaust leaks within the locomotive's engine compartment. This is especially true for modern locomotives with pressurized engine compartments. Therefore, locomotives in which diesel exhaust gasses that enter the cab through these routes do not meet the standard of care embodied in 49 CFR §229.43 (a) because the diesel exhaust gasses have not been "released entirely outside the cab."

Similarly, if diesel exhaust gasses from a locomotive are vented outside the locomotive but then enter the cab from air leaks in the seals around doors and windows under usual or normal operating conditions, said locomotive would not comply with the railroad industry standard of care embodied in 49 CFR §229.43 (a) because means were not provided to "prevent entry of products of combustion into the cab." Once again, if some diesel exhaust gasses from outside the locomotive entered the cab due to unusual operating conditions, such as unusual wind conditions, that locomotive would not be considered non-compliant with the standard of care set forth in 49 CFR §229.43 (a).

Based on the foregoing, it is my opinion, within a reasonable degree of professional certainty within my area of expertise in railroad safety that:

- 1) Locomotive diesel exhaust gasses that enter the locomotive cab through electrical cabinets and heater blowers are more likely than not to originate from exhaust leaks within the locomotive's engine compartment. This is especially true for modern locomotives with pressurized engine compartments. Therefore, locomotives in which diesel exhaust gasses that enter the cab through these routes do not meet the standard of care embodied in 49 CFR §229.43 (a) because the diesel exhaust gasses have not been "released entirely outside the cab;"
- 2) Furthermore, if diesel exhaust gasses from a locomotive are vented outside the locomotive but then enter the cab from air leaks around doors and windows under usual or normal operating conditions, said locomotive would not comply with the railroad industry standard of care embodied in 49 CFR §229.43 (a) because means were not provided to "prevent entry of products of combustion into the cab." However, if some diesel exhaust gasses from outside the locomotive entered the cab due to unusual operating conditions, such as unusual wind conditions, that locomotive would not be considered non-compliant with the standard of care set forth in 49 CFR §229.43 (a);

6.3 Strict Liability Standard

The final question to be considered is whether the Federal Locomotive Safety Standards – 49 CFR §229.43 (a) is a strict liability standard which requires railroads to ensure that their locomotive cabs remain free of diesel exhaust gasses at all times when a locomotive is in service or offered for service, regardless of whether the railroad had prior knowledge of the diesel exhaust gas leaks.

Federal Railroad Locomotive Safety Standards do indeed constitute a standard of strict liability. The railroad need not have prior knowledge of the locomotive defect for it to be in violation of the regulation. Locomotives are required to be in compliance with the Federal safety standards at all times when they are in use or permitted to be used. References to this strict liability standard can be seen FRA's Motive Power and Equipment Compliance Manual, which sets forth enforcement guidance that FRA provides to its MP&E safety inspectors. Chapter 8 of the MP&E Compliance Manual, dated June 2012, addresses enforcement guidance related to the Locomotive Safety Standards - 49 CFR Part 229 and states, in pertinent part:

A locomotive should comply with all the requirements of 229 and be free of any defects." [Emphasis in the original] (FRA Motive Power and Equipment Compliance Manual P. 8-1)

FRA's enforcement guidance also states:

Although a railroad need not have knowledge of a non-complying condition on a locomotive to be assessed a civil penalty under the Locomotive Safety Standards,

each Inspector is expected to use sound judgment along with the guidance outlined in the General Manual, when deciding whether the issuance of a violation report is appropriate under the circumstances.” (FRA Motive Power and Equipment Compliance Manual P. 8-2)

A Federal railroad safety standard that allows assessment of civil penalties against a railroad for non-compliant conditions, without the railroad’s prior knowledge of the non-compliant condition is the very definition of a strict liability standard. Therefore, the all the provisions of 49 CFR Part 229, including 49 CFR §229.43 (a) constitute a strict liability standard.

Based on the foregoing, it is my opinion, within a reasonable degree of professional certainty within my area of expertise in railroad safety that:

- 1) Federal Railroad Locomotive Safety Standards constitute a standard of strict liability. The railroad need not have prior knowledge of the locomotive defect for it to be in violation of the regulation. Locomotives are required to be in compliance with the Federal safety standards at all times when they are in use or permitted to be used;
- 2) References to this strict liability standard can be seen FRA’s Motive Power and Equipment Compliance Manual -- Chapter 8, which states, “a railroad need not have knowledge of a non-complying condition on a locomotive to be assessed a civil penalty under the Locomotive Safety Standards.” A Federal railroad safety standard that allows assessment of civil penalties against a railroad for non-compliant conditions, without the railroad’s prior knowledge of the non-compliant condition is the very definition of a strict liability standard. Therefore, the all the provisions of 49 CFR Part 229, including 49 CFR §229.43 (a) constitute a strict liability standard.

7.0 Prior Testimony

I, George A. Gavalla, have been deposed or given trial testimony in the following cases during the past four years:

Trial: Lenford Lennon v. Waste Conversion Technologies, Inc, -- Docket No. NNI CV 10 6000807 S; Meriden, CT; January 30, 2013;

Deposition Testimony: Arispe et al. v. TIMEC Company, Inc., et al: Case No. NC043750; Los Angeles, CA; February 7, 2013;

Deposition Testimony: Estate of Timothy Anders v. Union Pacific Railroad: Case No 07-L-43; Windsor Locks, CT; March 27, 2013;

Deposition Testimony: Burrows v. CSX; Case No. 12 - 4139; Philadelphia, PA; June 12, 2013;

Deposition Testimony: Flores v. Amtrak et al: Case No. 3:12-CV-686-MEJ ; Oakland, CA June 27, 2013;

Deposition Testimony: *Palmer v. BNSF Railway Company*; Case No. CV0297; New York, NY; July 18, 2013;

Deposition Testimony: *Wallis v. BNSF Railway Company*; Case No. 2:13-CV-00040-TSZ; Boston, MA; September 19, 2013;

Deposition Testimony: Kellogg v. BNSF Railway Company; Case No. 1:11- CV-7603; Chicago, IL; September 23, 2013;

Trial: MelendRumeliote v. Port Authority Trans Hudson, *Case No. ESX-L7745-11S*; Newark, NJ; September 26 & 30, 2013;

Deposition Testimony: Rebollar v. LACMTA, *Case No. BC-421357*; Los Angeles, CA; January 9, 2014;

Deposition Testimony: Whitt v. BNSF, *Case No.8:12-CV-00358*; St. Louis, MO; January 16, 2014;

Deposition Testimony: White v. NJTRO, *Case No. 3:11-cv-00441*; Philadelphia, PA, February 4, 2014;

Trial Testimony *Wallis v. BNSF Railway Company*; Case No. 2:13-CV-00040-TSZ; New Haven, CT; February 25, 2014;

Deposition Testimony: Shuptrine v. Union Pacific, *Case No. 2012-49668*; Houston, TX; February 27, 2014;

Deposition Testimony: Casteel and Rickard v. CSX Transportation, Inc., *Case No. 12-C1-443*; Kansas City, MO; May 20, 2014;

Deposition Testimony: Randy Battenfeld v. BNSF Railway. *Case No. 1-CV-213-JED-PJC*; Hartford, CT; June 20, 2014;

Deposition Testimony: Sanch Rumeliote et. al. v. Union Pacific Railroad et al, *Case No. CV49117*; Dallas, TX; August 20, 2014;

Deposition Testimony: Estate of Andrew Haukereid v. Amtrak, *Case No. 3:13-cv-00092-DPN*, Hartford, CT; September 16, 2014;

Deposition Testimony: Jacob Keating v. Amtrak; *Case No. 34-2010-00074175*; Sacramento, CA; November 13, 2014;

Trial Testimony: Jacob Keating v. Amtrak, *Case No. 34-2010-00074175*; Sacramento, CA; November 14, 2014;

Deposition Testimony: Curtis Rookaird v. BNSF Railway Co., Case No. 14 CV-001-00176-RSL; Boston, MA, June 2015.

Deposition Testimony: Shawn Hall v. Illinois Central Railroad Co., *Docket No. CT-005310-12*; Preston CT, August 19, 2015;

Trial Testimony: Sean Palmer v. BNSF Railway, *Case No. CV0297*; Stockton, CA, October 2, 2015;

Deposition Testimony, David H. Brewer v. BNSF Railway Company, *Case No. CV-14-65-GF-BMM-RKS*; Norwich, CT, February 18, 2016;

Deposition Testimony, Stephan Gordon v. Illinois Central Railroad Company, *Case No. CT-005309-12*, Div. I; Preston, CT, March 18, 2016;

Deposition Testimony: Jeffrey Helmink v. BNSF Railway Co.: *Case No. DV-12-1207*, Boston, MA, April 13, 2016;

Trial Testimony: Shawn Hall v. Illinois Central Railroad Co., *Docket No. CT-005310-12*; Memphis, TN, May 11-12, 2016;

Trial Testimony: Curtis Rookaird v. BNSF Railway Co., *Case No. 14 CV-001-00176-RSL*, New Haven, CT, May 19, 2016;

Deposition Testimony: John Donahue v New Jersey Transit Rail Operations, Inc.: *Case No. 14-035673*, Philadelphia, PA, June 9, 2016;

Deposition Testimony: Estate of Carl Leroy Harris v. BNSF Railway Company; *Case No. CJ-2014-243*, East Hartford, CT, June 23, 2016;

Deposition Testimony: Mark Vandelune v. DM&E; Civil File No: 3:15-CV-03101-MWB; Hartford, CT, August 8, 2016;

Deposition Testimony: Michael Frost v. BNSF Railway Company; *Case No. 9:15-cv-00124-DWM*, Mashantucket, CT, August 9, 2016;

Deposition Testimony: Henry Lockhart v. Long Island Rail Road; *Civil Action No. 1:16-cv-1035*; New Haven; CT; August 12, 2016;

Trial Testimony: Jeffrey Helmink v. BNSF Railway Company: *Case No. DV-12-1207*; Billings Montana, September 8, 2016;

Deposition Testimony: Jeffrey Rohr v. BNSF Railway Company: *Cause No. DV 14-*

1219; East Hartford, CT, September 27, 2016;

Deposition Testimony: Jamey Murphy et al. v. Town of Darien et al.; Case No. CV-13-6039787-S; North Haven, CT, October 12, 2016;

Deposition Testimony: Nathan Scott Johnson v. City of Tacoma, Dept. of Tacoma Public Utilities, Tacoma Rail; Case No. 15-2-14412-5; New London, CT, October 21, 2016;

Deposition Testimony: Alexander B. Carrick v. Wisconsin Central LTD; Case No. 2014 CV-000326; New York, NY, October 24, 2016;

Deposition Testimony: Steve Gordon v. Norfolk & Portsmouth Public Belt Line; Case No. CL 15005959-00; Portsmouth, VA, November 9, 2016.

8.0 Signature

The opinions contained herein are based on my background, education, experience and information provided thus far and are stated within a reasonable degree of professional certainty within my area of expertise in railroad safety. I reserve the right to amend or supplement this report if additional information is made available.

Submitted: December 11, 2016



By: George A. Gavalla,
11 Cherry Hill Road
Norwich, CT 06360

APPENDIX A CURRICULUM VITAE - GEORGE A. GAVALLA

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Ggavalla@aol.com

PROFILE **National railroad safety executive. Program architect, leader, and negotiator. Skilled troubleshooter. Senior US Government leader with corporate and union experience. International background as consultant and liaison. Broad intellectual perspective.**

- 38 years' railroad safety experience in positions of strategic and leadership responsibility.
- President Triad Consulting, a railroad safety and security consulting firm with affiliates in every railroad operating discipline.
- Former Associate Administrator for Safety, Federal Railroad Administration (FRA). Head of the agency's Office of Safety, directed the Federal government's railroad accident investigation, safety inspection and safety enforcement programs. Led large scale comprehensive safety investigations on the major railroad's in the U.S. to identify safety risks and implement safety improvement action plans. Senior FRA liaison to industry leaders, White House, Federal agencies, the Congress and State legislatures.
- Has testified before Congress, the National Transportation Safety Board, and other federal and state agencies regarding railroad safety matters.
- Multiple appearances and interviews on CNN, 60 Minutes II, National Public Radio, New York Times, Washington Post, and numerous other news media outlets as a rail safety and security expert.
- During my tenure as head of the Office of Safety, the railroad industry achieved the lowest levels of rail-related fatalities and injuries in its history, all rail-related fatalities fell by 19%, employee fatalities by 48% and grade crossing fatalities by 28%. Also led FRA's most productive era for promulgation of new safety standards and regulations.
- Advanced studies in International Relations and History, Georgetown University.
- Served as Director of Research, Brotherhood of Railroad Signalmen, National Headquarters (1991-95). Assistant General Chairman, Brotherhood of Railroad Signalmen (1984-91). Connecticut State Legislative Representative (1989-91). Hands-on experience as Communications and Signal Maintainer, Consolidated Rail Corporation (1976-84). Congressional Intern, U.S. House of Representatives (1974).
- *“...significant factor in improving safer procedures and practices in the industry.... strong leadership....ability to hear all sides....primary Office of Safety spokesman.... explaining the budget requests to Congressional*

committee staffers and OMB budget officials....outstanding results....superb work...." (from official Evaluations)

RESULTS

RAILROAD SAFETY LEADER — NATIONAL & INTERNATIONAL EXPERIENCE

Comprehensive railroad safety leadership experience. International reputation for successfully advocating, designing, negotiating and executing effective safety strategies.

RESULT

- Facilitated multi-disciplinary hazard analysis/risk assessment of railroad signal system and highway-rail grade crossing systems for a new start light rail transit operation in Texas
- Conducted a comprehensive safety assessment of switching operations for a railroad serving one of the world's largest oilfields in Kazakhstan.
- Co-authored a hazard identification study of Remote Control Locomotive operations and technology.
- Directed an in-depth FRA analysis of railroad safety data, identifying risk factors and chronic problems. Persuaded top level railroad executives, rail labor leaders, and railroad suppliers to work with FRA in initiating and executing industry-wide safety programs.
- Led a 48-member FRA Rail Safety Advisory Committee to assist FRA in developing nine new safety regulations, and several proposed regulations, including the agency's first performance-based regulations.
- Led FRA initiative to develop safety guidelines for remote control locomotive technology and led industry-wide task force oversee the safe implementation of remote control locomotive technology.
- Created FRA's first formal Fatigue Mitigation Program and personally led the adoption of fatigue mitigation programs across the railroad industry.
- Convened a combined task force of industry and union leaders to work with FRA in reducing accidents in train yard/switching facilities—lead to a 50% reduction in fatalities and an 18% reduction in accidents.
- Initiated Safety Compliance agreement with CSX that lead to large decrease in track caused train accidents. Lead a large scale safety assessment of Union Pacific that helped reduce the number of rail fatalities by 75 % in one year.
- Led FRA in creating an exchange program with Japan Central Railways. Led rail safety exchanges and meetings with railway officials from Russian Federation, Australia, UK,

India, Poland, Romania, Iraq, Nigeria, People's Republic of China, and Japan.

2004-Present **President — Triad Railroad Consulting**

Norwich, CT

Provide executive direction to a multi-disciplined team of affiliated railroad safety and security experts in the following rail related areas: safety and security risk assessments and hazard analysis, regulatory compliance, safety and security research, accident investigation and analysis, litigation consulting.

RESULT

- Facilitated multi-disciplinary hazard analysis/risk assessment of railroad signal system and highway-rail grade crossing systems for a new start commuter rail operation in Texas
- Conducted a comprehensive safety assessment of switching operations on a railroad in Kazakhstan that is the world's largest crude oil carrier and has 94% of its traffic in hazardous materials.
- Developed and conducted rail safety training classes for switching operations and railcar inspections.
- Co-authored a hazard identification study of Remote Control Locomotive operations with a lead railroad expert who has published more than 100 books and articles on railroad safety and operations.
- Railroad accident analysis in cases involving Federal regulatory compliance, operating and safety rule compliance, remote control Locomotive Operations, signal operations, highway-rail grade crossings, switching activities and safety appliances.

1997-2004

Associate Administrator for Safety — US Government Senior Executive Service

Federal Railroad Administration — Washington, DC

Provide nationwide leadership in building alliances to plan and implement strategies and formal regulations to improve railroad safety throughout the United States. Provide frequent consultation with union and industry leaders worldwide.

RESULT

- Successfully led an industry-wide effort for adoption of fatigue mitigation policies—including the first railroad policy that gives train crews at least one day each week of guaranteed rest.
- Chaired FRA safety inquiry into remote control locomotive technology and led FRA team that issued the FRA's first recommended safety guidelines for the operation of remote

control locomotives. Subsequently organized and led an industry-wide task forces to oversee the safe implementation of remote control locomotive technology.

- Led FRA Grade Crossing Safety Program and initiated a Law Enforcement Liaison Program in FRA Regional offices, sponsoring local police to promote safety laws for highway-rail crossings. Grade crossing accidents fell 24% and crossing fatalities fell 28% during this period.
- Led an FRA study of the safety of the Amtrak railroad tunnels into New York City and testified about tunnel safety at hearing for New York State Senators.
- Studied German joint freight/transit rail operations in using the same rail line, in preparation for promulgation of a new FRA policy on shared use of railroad track between light rail transit operator and freight railroads. Authored the rail safety segment of a pioneering Federal Transit Administration report on this issue.
- Founded the Switching Operations Fatality Analysis (SOFA) task force of industry and union leaders which worked with FRA in reducing train yard accidents and switching facilities—led to a 50% reduction in fatalities and an 18% reduction in accidents.

1995-1997

Railroad Safety Project Coordinator — GS-15

Federal Railroad Administration — Cambridge, MA

Served as FRA Project Coordinator on Amtrak and the Long Island Railroad, NY, the largest commuter railroad in the country. Conducted large scale assessments of passenger rail operations and safety. Directed development and implementation of action plans to improve passenger rail and highway-rail grade crossing safety.

RESULT

- LIRR grade crossing failures reduce by 2/3rds, employee injuries fell 23%
- Amtrak employee injuries declined 30%.
- Led trips to Japan and Germany for investors exploring state-of-the-art rail technology, including Magnetic Levitation (MagLev) technology, led to U.S. investments in MagLev. Worked with Japan Ministry of Railways and U.S. Embassy to obtain previously unreleased documents that established Japanese safety requirements for MagLev.

1991-1995

Director of Research — HQ, Brotherhood of Railroad Signalmen — Mt. Prospect, IL

Directed a wide-ranging research program impacting contract negotiations, safety issues, and the introduction and assessment of railroad signal and communications technologies.

RESULT

- Served as the organization's primary liaison to the FRA on railroad safety issues.
- Initiated and led a campaign that persuaded FRA to issue regulations protecting railroad workers from being struck by trains. Within two years, roadway worker fatalities had been reduced by 60% and fell to zero in 2004.
- Granted Special Observer status in National Transportation Safety Board hearings for the most deadly Amtrak accident in history at Saraland, Alabama in 1993. Submitted written report into the NTSB accident record regarding causal factors and preventative measures.

1984-1991 **Assistant General Chairman** — Brotherhood of Railroad Signalmen — Lancaster, PA

RESULT

- Negotiated contracts with seven railroads. Managed contract disputes and represented BRS at settlement conferences and before arbitration panels.
- Successfully lobbied Connecticut State Legislature for passage of the nation's first mandatory highway-rail grade crossing safety standards.

1976-1984 **Communications/Signal Maintainer** — Consolidated Rail Corporation — Harrisburg, PA

RESULT

- Inspected, tested, repaired and built railroad communications and signal systems and highway-rail grade crossing warning devices on both freight and passenger railroad lines in Washington, DC, Maryland, Virginia, Pennsylvania and Delaware.

Education

2000 - **Harvard University – Kennedy School of Government** – Cambridge, Massachusetts

- Executive Training Course - Effective Decision Making

1998 - **Federal Executive Institute** - Charlottesville, Virginia

- Graduate – Senior Executive Service Program

1971-1976 **Georgetown University** — Washington, DC
 • Bachelor of Arts Program – History Major

Professional Affiliations:

2005 – Present **National Association of Railroad Safety Consultants and Investigators**

2009 – Present **American Society of Civil Engineers** – Affiliated Member

2013 – Present **The Air Brake Association** -- Member

APPENDIX B

Fee Schedule

Consultant: George Gavalla

In the Matter of : **Robert Newkirk v Consolidated Rail Corp., et al**
Case No. 1:16-cv-332; In the United States District
Court, Western District of Michigan, Southern
Division

Fees and Charges:

• <u>Retainer Fee</u>	Applied against hourly charges	\$3,000
• <u>Investigation/ Research:</u> Includes site visits, report writing, consultation		\$250/Hour
• <u>Deposition Testimony:</u> Includes courtroom and office preparation and waiting time		\$300/Hour
• <u>Trial Testimony:</u> Includes courtroom and office preparation and waiting time		\$300/Hour
• <u>Travel Time:</u> For time spent in actual transit while away from home office		\$100/Hour
• <u>Direct Expenses:</u> Includes air fares, taxi, lodging, \$50 per diem for meals & incidental expenses while on travel, mileage rate for use of personal auto at the highest rate allowed by the IRS, document reproduction, mailing and other reasonable and necessary expenses		Actual Expenses

Appendix C

Documents Reviewed Re:

**Robert Newkirk v Consolidated Rail Corp., et al
Case No. 1:16-cv-332; In the United States District
Court, Western District of Michigan, Southern
Division**

- 1) 49 CFR Part 229 – Railroad Locomotive Safety Standards;
- 2) Final Rule Re: 49 CFR Parts 229 and 230 – FR Vol. 45, No. 63;
- 3) FRA Motive Power and Equipment Compliance Manual – Chapter 8;
- 4) Report to Congress – Locomotive Crashworthiness and Cab Working Conditions – September 1996;
- 5) Railroad Occupational Safety and Health Standards; Termination – Policy Statement – FR Vol. 43, No. 50 – Tuesday, March 14, 1978.
- 6) Complaint and Jury Demand;
- 7) Case Management Order;
- 8) Plaintiff's Initial Disclosure;
- 9) Plaintiff's Answers to Defendant's Interrogatories;
- 10) Plaintiff's Response to Defendants Request for Documents;
- 11) Defendant Conrail's Initial Disclosures – Exhibits 13 & 15.A – 15.P;
- 12) Defendant Norfolk Southern Railway Company's Initial Disclosure – Exhibits 18, 21.F – 21.K & 23.